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THE RENT AND MORTGAGE INTEREST RESTRICTIONS ACTS, 1920 TO 1925

WITH

INTRODUCTION, NOTES, RULES AND FORMS

AND

THE TEXT OF THE REPEALED ACTS

BY

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PREFACE.

SINCE the publication of the third edition of this book, two statutes have been passed dealing with its subject-matter.

The provisions of the Act of 1920 have now been amended by Acts of 1923 and 1924 and extended by an Act of this year until December 25, 1927. A limited control is also provided for a further five years.

Apart, however, from these changes in the law, the body of case law continues to grow apace. The last case available at the time of the publication of this edition was that of *Hyman* v. *Steward*, decided on May 8, 1925, and reported in the Weekly Notes for the week ending May 16, 1925.

The structure of the book has not been altered. The relevant sections of the 1923 Act, Parts I and III, and the 1924 Act, have been printed with the sections of the 1920 Act, which continues to be the principal Act and forms the framework of the text. By this means it is thought that amendments of the law since it was codified in 1920 are readily observable. At the commencement of each section, a note in leaded type has been added so that it may be clear at a glance from which Act the section set out is taken.

The 1923 (Notices of Increase) Act and the 1923 Act, Part II, which deals with the law as it will be between December 25, 1927 and 1932, have been separately annotated and will be found at the end of the 1920 Act.

I desire to record my thanks to my friend Mr. Athol Johnson, who has given me great assistance in seeing the present edition through the press.

ARCHIBALD SAFFORD.

2 PUMP COURT,
TEMPLE, E.C. 4.
June 8th, 1925.

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EXPLANATION OF ABBREVIATIONS.

1915 Act—Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915 (5 & 6 Geo. V. c. 97).

1918 Act—Increase of Rent, &c. (Amendment) Act, 1918 (8 Geo. V. c. 7).

1919 Act—Increase of Rent and Mortgage Interest (Restrictions) Act, 1919 (9 Geo. V. c. 7).

1919 (No. 2) Act—Increase of Rent, &c. (Amendment) Act, 1919 (9 & 10 Geo. V. c. 90).

1920 Act—Increase of Rent and Mortgage Interest (Restrictions) Act, 1920 (10 & 11 Geo. V. c. 17).

1923 (Continuance) Act—Increase of Rent and Mortgage Interest Restrictions (Continuance) Act, 1923 (13 & 14 Geo. V. c. 7).

1923 (Notices of Increase) Act—Rent Restrictions (Notices of Increase) Act, 1923 (13 & 14 Geo. V. c. 13).

1923 Act—Rent and Mortgage Interest Restrictions Act, 1923 (13 & 14 Geo. V. c. 32).

1924 Act—Prevention of Eviction Act, 1924 (14 & 15 Geo. V. c. 18).

1925 Act—Rent and Mortgage Interest (Restrictions Continuation) Act, 1925 (15 & 16 Geo. V. c. 32).

References to sections in the text, if unqualified, refer to sections of the 1920 Act.

The principal Act means the 1920 Act.

THE RENT AND MORTGAGE INTEREST (RESTRICTIONS) ACTS, 1920 TO 1925.

INTRODUCTION.

THERE have been in all no less than ten Rent and Mortgage Interest (Restrictions) Acts, and they will be found set out in the Appendices to this book. The ones now in force are the 1920 Act as amended by the 1923 Act, the 1923 (Notices of Increase) Act, and the 1924 Act. Two have been merely continuing Acts. The 1918 Act was repealed by the 1919 (No. 2) Act, and the others were repealed by the 1920 Act. The Acts now in force are to expire upon December 25, 1927, with certain limited exceptions to which reference is made more particularly hereafter.

The short effect of these statutes is to provide that landlords of dwelling-houses, to which the Act of 1920 applied, shall not be at liberty to raise the rent of, or eject their tenants from, those premises.

The operation of the Acts is confined to dwelling-houses of which either the annual amount of the standard rent or the rateable value does not exceed, in the Metropolitan Police district £105, in Scotland £90, and elsewhere £78. If the annual standard rent is

£150, but the annual rateable value is £105, the house, if in London, will be within the Acts, for the words are "*either* the annual amount of the standard rent *or* the rateable value does not exceed."[1]

A dwelling-house for this purpose includes any house or rooms in a house let separately as a dwelling.[2]

The standard rent is the rent at which the dwelling-house was let on August 3, 1914, or if the house was not then let, the rent at which it was last let before that date, or, if the house was first let after that date, the rent at which it was first let.[3] The rateable value is the rateable value on August 3, 1914, or if the house was first assessed after that date, the rateable value at which it was first assessed.[4]

Premises erected or converted into flats after, or in course of erection or conversion on, April 2, 1919,[5] and those of which the landlord was in actual possession on July 31, 1923, or thereafter comes into actual possession, unless he so comes into possession by virtue of an order of the Court on the ground of non-payment of rent, are excluded from the operation of the Acts.[6]

So too are houses let with land, where the rateable value of the land is a quarter or more of the rateable value of the house,[7] and houses let at rents which include payments in respect of board, attendance or use of furniture[8] (except as mentioned hereafter).

Premises used exclusively for business purposes were within the 1920 Act from July 2, 1920, until June 27, 1921, but have not been within the Act since that date. Premises, which are the subject of a single

[1] 1920 Act § 12 (2).
[2] 1920 Act § 12 (8).
[3] 1920 Act § 12 (1) (a).
[4] 1920 Act § 12 (1) (e).
[5] 1920 Act § 12 (9).
[6] 1923 Act § 2 (1).
[7] 1920 Act § 12 (2) (iii).
[8] 1920 Act § 12 (2) (i).

letting, if used partly as business premises and partly as a dwelling-house, are within the 1920 Act.[1]

A limited permission to raise the rent is granted by § 2 (1) of the 1920 Act as amended by § 7 (1) of the 1923 Act, and leave to contract out of the Act is given, provided that the contract is made after July 31, 1923, and the tenancy in respect of which it is made is for not less than two years and to expire at some date after June 24, 1926.[2]

A tenant may apply to the County Court for an order suspending certain of the permitted increases of rent, if he is able to satisfy the Court, by the production of a certificate of a sanitary authority, or otherwise, that the house is not in a reasonable state of repair,[3] or if he prefers it he may make use of this certificate as a defence to an action by his landlord for such increase of rent.[4] The operation of the Act of 1920 is retrospective, and by the joint effect of §§ 1 and 14 (1) of that Act and § 8 (2) of the 1923 Act, any increase since March 25, 1920, which is not now expressly authorised, if paid before July 31, 1923, was recoverable from the landlord on or before January 31, 1924, and if paid on or after July 31, 1923, is recoverable at any time within six months of the date of payment. If an action be brought by a tenant for recovery of over-paid rent, it is sufficient if the writ or summons be issued within the six months. It is not necessary that judgment should be obtained within that period.[5]

The grounds upon which a landlord may recover possession of a dwelling-house are set out in § 5 (1)

[1] 1920 Act § 12 (2) (ii).
[2] 1923 Act § 2 (2).
[3] 1920 Act § 2 (2).
[4] 1923 Act § 5.
[5] v. p. 82, *infra*.

of the 1920 Act as amended by § 4 of the 1923 Act, and § 1 of the 1924 Act.

One of these grounds is that he reasonably requires it for occupation as a residence for himself or any son or daughter of his over eighteen years of age. He has, however, further to satisfy the Court that alternative accommodation is available for the tenant, except in four cases. The first of these is designed to meet those occasions where an employer has provided accommodation for his servant, who has since left his service. The second seeks to assure a home to agricultural workers. The third provides for members of His Majesty's forces who had to let their houses because of their war service; and the fourth for a person who became the landlord of a house on or before May 5, 1924, and can satisfy the Court that greater hardship would be caused by refusing, than by granting, an order for possession.

The requirement of premiums is made a criminal offence punishable on summary conviction by a fine of £100,[1] and though disguised as a sale of furniture, if the price demanded exceeds the reasonable price of the articles, the excess will nevertheless be treated as a premium.[2]

A notice of increase of rent containing a false or misleading statement,[3] or a refusal to state in writing what is the standard rent, or a false statement of it, is punishable by a fine of £10,[4] and the making of entries in a rent-book showing a tenant as in arrear in respect of a sum irrecoverable under the Acts is punishable in like manner.[5]

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[1] 1920 Act § 8 (2).
[2] 1923 Act § 9 (1).
[3] 1923 Act § 3 (2).
[4] 1920 Act § 11.
[5] 1920 Act § 14 (2).

Those who let their houses furnished are likewise restrained from charging more than 25 per cent. above the normal profit, which means that profit which might reasonably have been expected from a similar letting in the year ending August 3, 1914.[1] And persons making an extortionate profit from furnished houses are liable, on summary conviction, to a fine of £100.[2]

Landlords are not, however, restrained from recovering possession of premises let furnished after the expiry of the contractual tenancy. If a house is let by a landlord to a tenant unfurnished and then sub-let by the tenant to a sub-tenant furnished, the tenant loses the protection of the Acts except in so far as they apply to furnished lettings, in other words, for the purpose of determining whether a house is protected or not, the tenancy of the occupier is to be regarded.[3]

The position of tenants retaining possession by virtue of the provisions of these Acts after the termination of their tenancies is also provided for. Such a tenant must observe, and will be entitled to the benefit of, all the terms and conditions of the original contract of tenancy, so far as they are consistent with these Acts.[4] He must give the notice which would have been required under the original contract of tenancy, if he desires to give up possession,[4] and must accept no consideration for giving up possession from anyone other than the landlord under penalty of £100.[5] A provision as to the sale of furniture is made in this case also similar to that in the case of premiums.[6]

A landlord, by accepting rent for three months after the notice to quit, which he has served, has

[1] 1920 Act § 9.
[2] 1920 Act § 10.
[3] pp. 66 *et seq. infra.*
[4] 1920 Act § 15 (1).
[5] 1920 Act § 15 (2).
[6] 1923 Act § 9 (2).

expired, shall not be deemed to prejudice his right to possession.[1]

The Acts apply to mortgages on, as well as to rents of, premises as specified in §§ 12 (2) and (9) of the 1920 Act and § 2 (1) of the 1923 Act,[2] and mortgagees of such premises are only permitted as from March 25, 1920, to increase the rate of interest on their mortgages to the limited extent prescribed by § 4 of 1920 Act. Increases since that date, not now permitted, are recoverable within six months of the date of payment, if paid by the mortgagor.[3]

The grounds upon which a mortgagee may have leave to enforce his security are set out in § 7 of the 1920 Act.

It should be noted that the Acts limit the amount by which rent or mortgage interest may be increased, but do not give the landlord or mortgagee power to increase them in cases where, apart from the Acts, he could not do so.[4] That is to say, a tenant or mortgagor is entitled to the benefit of an existing contract, but is protected on its expiry by these Acts. Thus a landlord cannot increase the rent until a tenancy is determined and a mortgagee cannot increase the rate of interest until apart from the Acts, he could have called in his mortgage.

Considerable difficulty was created by a failure in some quarters fully to appreciate this provision of the 1920 Act. The result was that in many cases landlords omitted to serve the necessary notice to quit before serving the notice of increase of rent, thereby rendering

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[1] 1920 Act § 16 (3).
[2] 1920 Act § 12 (4).
[3] 1920 Act §§ 1 and 14 (1) and 1923 Act § 8 (2).
[4] 1920 Act § 3 (1).

the latter inoperative. The 1923 (Notices of Increase) Act was passed to relieve such persons, and provided that a notice of increase should be operative as if it were also a notice to quit expiring at the earliest date at which a valid notice to quit could have expired, if served when the notice of increase was served. The effect of this is that tenants who have paid rent in accordance with valid notices of increase are unable to take advantage of § 14 (1) of the 1920 Act for the purpose of recovering such payments as overpaid rent, so far as they were paid in respect of a period after a notice to quit could have been expressed to expire if served when the notice of increase was served. And tenants who had not paid rent in accordance with valid notices of increase were made liable for such back rent, but in their case only as from December 1, 1922. Provision was further made that in the latter case they should have an opportunity of payment by reasonable instalments.[1]

Due notice of intention to increase rent must be given by the landlord to the tenant[2] and the form of notice will be found in the 1920 Act, Schedule I.

The county court has power to amend inaccurate notices of increase upon such terms as to payment of arrears of rent as seem just,[3] but no increase of rent which becomes payable by reason of such an amendment of a notice of increase shall be recoverable in respect of any rental period ending more than six months before the date of the order authorising the amendment.[4] The Court may, also, determine what is the rent, standard rent or net rent of any dwelling-house to which the Acts apply.[5]

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[1] 1923 (Notices of Increase) Act §§ 1 and 2.
[2] 1920 Act § 3 (2).
[3] 1923 Act § 6 (1).
[4] 1923 Act § 8 (1).
[5] 1923 Act § 11 (1).

After December 25, 1927, at which date the Acts as a whole will expire, a tenant of a dwelling-house which is still within the Act at that date is called a sitting tenant. If proceedings are taken for the ejectment of such a tenant, the Court may refuse to make an order for possession, if satisfied that exceptional hardship would be caused by it.[1] In such case, the Court will also determine what increase of rent (if any) is fair and reasonable for the sitting tenant to pay.[2]

Reference committees are to be appointed by the Minister of Health to whom the county court judge may refer such questions,[3] and landlords and sitting tenants may be given the opportunity of referring any such questions direct to such committees.[4]

If a dwelling-house in the occupation of a sitting tenant is subject to a mortgage to which the Acts apply, provision is made for the County Court, upon the application of the landlord to restrain the mortgagee from calling in the mortgage, so long as the sitting tenant retains possession, if the landlord can satisfy the Court that it would cause him exceptional hardship if the security were enforced. The restriction may be imposed upon terms as to increased interest.[5]

This part of the Act is to continue in operation until December 25, 1932, unless a resolution be passed by both Houses of Parliament for its repeal at an earlier date and His Majesty in Council so repeal it.[6]

In dealing with the construction of emergency legislation, regard must be had "as in other statutes, to the plain meaning of the language used, yet, as they restrict

[1] 1923 Act § 12 (1).
[2] 1923 Act § 12 (2).
[3] 1923 Act § 12 (5).
[4] 1923 Act § 15 (2).
[5] 1923 Act § 14.
[6] 1923 Act § 17 and 1925 Act § 1 (3) (*b*).

the ordinary rights of individuals arising from their mutual contracts and relationships, they should not be needlessly extended beyond the particular mischiefs they are designed to avoid or remedy"—*per* Bray, J., in *Wilcock* v. *Booth* [1920] W. N:, at p. 45.

INCREASE OF RENT AND MORTGAGE INTEREST (RESTRICTIONS) ACT, 1920.*

10 & 11 Geo. 5, Ch. 17.

An Act to consolidate and amend the Law with respect to the increase of rent and recovery of possession of premises in certain cases, and the increase of the rate of interest on, and the calling in of securities on such premises, and for purposes in connection therewith. [2nd July, 1920.]

Be it enacted, etc.

RESTRICTIONS ON INCREASE OF RENT AND MORTGAGE INTEREST.

[**1920 Act, § 1.**]—1. *Restrictions on increasing rent and mortgage interest.*—Subject to the provisions of this Act, where the rent [1] of any dwelling-house to which this Act applies, or the rate of interest on a mortgage to which this Act applies, has been, since the twenty-fifth day of March, nineteen hundred and twenty, or is hereafter, increased,[2] then, if the increased rent or the increased rate of interest exceeds by more than the amount permitted under this Act the standard rent [3] or standard rate of interest, the amount of such excess shall, notwithstanding any agreement to the contrary, be irrecoverable from the tenant or the mortgagor, as the case may be:

Provided that, where a landlord or mortgagee has increased the rent of any such dwelling-house or the rate of interest on any such mortgage since the said date, but before the passing of this Act, he may cancel such increase and repay any amount

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* The relevant provisions of the Rent and Mortgage Interest Restrictions Act, 1923, the Prevention of Eviction Act, 1924, and the Rent and Mortgage Interest (Restrictions Continuation) Act, 1925, will be found set out or referred to under the sections of this Act. The full text of those Acts is reprinted on pp. 137 *et seq. infra.*

Restrictions on Increase of Rent, &c.—*continued.*

paid by virtue thereof, and in that case the rent or rate shall not be deemed to have been increased since that date.

[**1923 Act, § 2 (2).**]—2. (2) Where, at any time after the passing of this Act, the landlord of a dwelling-house to which the principal Act applies grants to the tenant a valid lease of the dwelling-house for a term ending at some date [not earlier than one year after the date fixed at the time at which the lease is granted for the expiration of the principal Act][4] being a term of not less than two years, or enters into a valid agreement with the tenant for a tenancy for such a term, the principal Act shall, as from the commencement of the term, cease to apply to the dwelling-house, and nothing in the principal Act shall be taken as preventing or invalidating the payment of any agreed sum as part of the consideration for such lease or agreement:

Provided that, where part of the dwelling-house is lawfully sub-let at the commencement of the term, and is a dwelling-house to which the principal Act applies, that part shall, notwithstanding anything in the foregoing provisions of this sub-section, continue to be a dwelling-house to which the principal Act applies.

[**1923 Act, § 3.**]—3. *Determination of certain leases and tenancies.*—Where before the passing of this Act the landlord of a dwelling-house to which the principle Act applies has granted to the tenant a valid lease of the dwelling-house for a term ending at some date after the twenty-fourth day of June, nineteen hundred and twenty-three, or has entered into a valid agreement with the tenant for a tenancy for such a term, and the rent thereby reserved is reserved at a rate which after but not before such last mentioned date exceeds the standard rent and the increases permitted under the principal Act or this Act, the landlord may, by three months notice in writing expiring not earlier than the twenty-first day of December, nineteen hundred and twenty-three, and not later than the thirty-first day of March, nineteen hundred and twenty-four, determine the said lease or tenancy, provided

that, if within one month of the receipt of such notice the lessee or tenant shall give to the landlord notice in writing that he elects to abide by the said lease or agreement and the terms thereof, then the said lease or agreement shall remain in full force and effect in every respect including the amount of the rent thereby expressed to be reserved unaffected by the principal Act or this Act.

Cf. 1915 Act, § 1 (1) and 1919 Act, § 4.

For definition of "standard rent" and "standard rate of interest," v. § 12 (1) (*a*) and (*b*); "landlord" and "tenant," v. § 12 (1) (*f*) and (*g*); "mortgage," v. § 12 (1) (*h*); "mortgagee" and "mortgagor," v. § 12 (1) (*f*); "tenancy," v. § 12 (1) (*g*).

For dwelling-houses to which this Act applies, v. § 12 (2) and (9).

For mortgages to which this Act applies, v. § 12 (4).

For "amount permitted under this Act," v. §§ 2 and 3, as regards rent, and § 4 as regards mortgage interest.

For means of recovery by the tenant or mortgagor of sums that are irrecoverable by the landlord or mortgagee, but paid by the tenant or mortgagor, v. § 14 (1).

For criminal liability of landlords in certain cases, v. §§ 3 (2), 8 (2), 10, 11, 14 (2), and 1923 (Notices of Increase) Act, § 2 (2).

For criminal responsibility of tenants, v. § 15 (2); and 1923 Act, § 7 (2).

"Before the passing of this" 1920 "Act," *i.e.*, before July 2, 1920.

"Before the passing of this" 1923 "Act," *i.e.*, before July 31, 1923.

[1] "Rent" in this section and throughout the Act means "rent payable in money and money alone"—*Hornsby* v. *Maynard* [1925] 1 K. B. 514. Thus where a tenant agrees to give his landlord the use of certain rooms in a house let to him, the value of those rooms cannot be treated as part of the rent. *Ibid.*

So, too, where a public-house is let subject to a tie, the tie is to be disregarded in determining the rent—*Glossop* v. *Ashley* [1922] 1 K. B. 1.

[2] Rent is "increased since March 25, 1920," within the meaning of this section if the increased rent was first payable in respect of a period commencing after, even though the agreement to pay the increased rent was made before, that date. Cf. *Goldsmith* v. *Orr* [1920] 89 L. J. K. B. 901; *Michael* v. *Phillips* [1924] 1 K. B. 16.

By parity of reasoning, it is submitted that the same rule applies to increased rate of interest on a mortgage.

Where a tenancy commences "from March 25" the rent begins to accrue on March 26, and if the rent reserved in respect of such a tenancy be greater than the rent formerly reserved, the rent has been increased since March 25 within the meaning of this section—*Raikes* v. *Ogle and Another* [1921] 1 K. B. 576; *Meggeson* v. *Groves* [1917] 1 Ch. 158.

Restrictions on Increase of Rent, &c.—*continued.*

An agreement or lease, by which a rent in excess of the standard rent is reserved, will stand, the standard rent being substituted for the rent reserved—*W. H. Brakspear & Sons, Lim.* v. *Barton* [1924] 2 K. B. 88.

The "rent" is not increased by the landlord ceasing to allow to the tenant some collateral advantage such as a discount on the purchase of goods. *Ibid.*

A curious point arose in the case of *Baker* v. *Wood* [1919] W. N. 312; confirmed on appeal [1920] W. N. 53, with reference to the effect of the Corn Production Act, 1917 (7 & 8 Geo. 5. c. 46), on increase of rent. A farm labourer was employed in 1902 at 14s. a week, and two years later was allowed by his employer to occupy a cottage, and 1s. a week was deducted from his wages. These rose from time to time, but 1s. a week was always deducted in respect of his occupation of the cottage. In 1917 a minimum wage of 25s. a week for farm labourers was imposed under the Corn Production Act of that year, and farmers were authorised by orders made under that Act to deduct 3s. a week in respect of the provision of a cottage. The farmer in this case thereupon deducted not 1s. but 3s. a week. *Held,* that he was entitled so to do, and that he had not increased the rent of the cottage within the meaning of these Acts.

[3] There is nothing in the Rent Acts which authorises a landlord, in a case where a house is let at a rent below the standard rent, to increase the rent up to the standard rent against the will of the tenant—*Dufty* v. *Palmer* [1924] 2 K. B. 35. *Cf.* also *obiter dicta* of Atkin, L.J., in *Glossop* v. *Ashley* [1922] 1 K. B. 1, at pp. 10 and 11; and *contra, Ibid.* per Scrutton, L.J., at p. 9.

The fact that since August 3, 1914, a house has been let to a new tenant does not prevent the Increase of Rent, &c., Acts from applying to such a house—*King* v. *York* [1919] 88 L. J. K. B. 839. But if the landlord was in actual possession of the whole of the house on July 31, 1923, or comes into actual possession thereafter, the house ceases to be one to which the Acts apply, unless the landlord comes into possession under an order of the Court made after July 31, 1923, on the ground of non-payment of rent—§ 2 (1) of the 1923 Act (p. 66, *infra*)—or the judge directs that the house shall not be decontrolled. He has power to do so in certain cases—§ 4 of the 1923 Act (p. 51, *infra*).

The provisions of the Landlord and Tenant Act, 1730 (4 Geo. 2. c. 28), entitling a landlord to recover double value in respect of premises where a tenant holds over, has no application to the case of a tenant continuing in possession under the present Acts, for the tenant is entitled to remain in possession under a claim of right and does not do so contumaciously—*Crook* v. *Whitbread* [1919] 88 L. J. K. B. 959.

The same case further decided that the landlord could not claim a sum for use and occupation of the premises, for to allow it would defeat

the whole object of the present Acts, since the landlord would be able to bring a fresh action *de die in diem*, which might so harass the defendant that he would be compelled to give up possession for the sake of peace. Accordingly the defendant was held to remain tenant on the terms of his former tenancy.—*Ibid.*

On the other hand, if a tenant himself gives notice to quit and then holds over, the landlord can recover double rent under § 18 of the Distress for Rent Act, 1737 (11 Geo. 2. c. 19)—*Flannagan* v. *Shaw* [1920] 3 K. B. 96; and so can the assignee of the reversion—*Northcott* v. *Roche* [1921] 37 T. L. R. 364.

In an Irish case, where judgment was entered for a sum irrecoverable by virtue of the 1915 Act, the Court on application reduced the judgment —*Farrell* v. *Boland* [1918] 52 Ir. L. T. 216.

[4] These words were substituted by the 1925 Act, § 1 (3) (*b*).

PERMITTED INCREASES IN RENT.

[1920 Act, § 2 (1).]—2. (1) The amount by which the increased rent [1] of a dwelling-house to which this Act applies may exceed the standard rent shall, subject to the provisions of this Act, be as follows, that is to say:—

(*a*) Where the landlord has since the fourth day of August nineteen hundred and fourteen incurred, or hereafter incurs, expenditure on the improvement or structural alteration of the dwelling-house (not including expenditure on decoration or repairs), an amount calculated at a rate per annum not exceeding six, or, in the case or such expenditure incurred after the passing of this Act, eight per cent. of the amount so expended:

Provided that the tenant may apply to the county court for an order suspending or reducing such increase on the ground that such expenditure is or was unnecessary in whole or in part, and the court may make an order accordingly:

(*b*) An amount not exceeding any increase in the amount for the time being payable [2] by the landlord in respect of rates over the corresponding amount paid in respect of the yearly, half-yearly or other period which included the third day of August nineteen hundred and fourteen, or in the case of a dwelling-house for which no rates were payable in respect of any period

Permitted Increases in Rent—*continued.*

which included the said date, the period which included the date on which the rates first became payable thereafter:

(*c*) In addition to any such amounts as aforesaid, an amount not exceeding fifteen per centum of the net rent:

Provided that, except in the case of a dwelling-house to which this Act applies but the enactments repealed by this Act did not apply,[3] the amount of such addition shall not, during a period of one year after the passing of this Act, exceed five per cent.:

(*d*) In further addition[4] to any such amounts as aforesaid—

(i) where the landlord is responsible for the whole of the repairs,[5] an amount not exceeding twenty-five per cent. of the net rent; or

(ii) where the landlord is responsible for part and not the whole of the repairs, such lesser amount as may be agreed, or as may, on the application of the landlord or the tenant, be determined by the county court to be fair and reasonable having regard to such liability[6]:

(*e*) In the case of dwelling-houses let by a railway company to persons in the employment of the company, such additional amount, if any, as is required in order to give effect to the agreement dated the first day of March nineteen hundred and twenty, relating to the rates of pay and conditions of employment of certain persons in the employment of railway companies, or any agreement, whether made before or after the passing of this Act, extending or modifying that agreement.

[**1923 Act, § 7 (1).**]—7. *Permitted increases of rent of sub-tenancies.*—(1) Where part of a dwelling-house to which the principal Act applies is lawfully sub-let, and the part so sub-let is also a dwelling-house to which the principal Act applies, then, in addition to any increases permitted by

paragraphs (*a*) to (*e*) of sub-section (1) of section two of the principal Act, an amount not exceeding ten per cent. of the net rent of the dwelling-house comprised in the sub-tenancy shall be deemed to be a permitted increase in the case of that dwelling-house, and an amount equivalent to five per cent. of the net rent of the dwelling-house comprised in the sub-tenancy shall be deemed to be a permitted increase in the case of the dwelling-house comprised in the tenancy. Sub-section (2) of section three of the principal Act shall not apply as respects any increase permitted under this sub-section.

[**1923 Act, § 7 (2).**]—(2) Where part of any such dwelling-house is so sub-let, the tenant shall, on being so requested in writing by the landlord, supply him, within fourteen days thereafter, with a statement in writing of any sub-letting, giving particulars of occupancy, including the rent charged, and should the tenant without reasonable excuse fail to do so or supply a statement which is false in any material particulars he shall be liable on summary conviction to a fine not exceeding two pounds.

Cf. 1915 Act, § 1 (1) (ii) and (iv); 1919 Act, § 2 (1) and (3).

For definition of "standard rent," v. § 12 (1) (*a*); "landlord," v. § 12 (1) (*f*) and (*g*); "rates," v. § 12 (1) (*d*); "net rent," v. § 12 (1) (*c*); "tenant," v. § 12 (1) (*f*) and (*g*); "repairs," v. § 2 (5).

For dwelling-houses to which this Act applies, v. § 12 (2) and (9).

For form of summons under this sub-section, v. Appendix III., Form 1.

For form of certificate on application under this sub-section, v. Appendix III., Form 3.

As to limitation of § 2 (1) (*b*) in its application to Scotland, v. § 18 (1) (*b*).

For other criminal responsibility of tenants, v. § 15 (2).

For criminal responsibility of landlords, v. §§ 3 (2), 8 (2), 10, 11, 14 (2), and 1923 (Notices of Increase) Act, § 2 (2).

The notice required by § 1 (1) (vi) of the 1915 Act is reproduced in § 3 (2) of this Act. One week's notice must be given to the tenant of an increase under § 2 (1) (*b*), and four weeks' notice of other increases hereby authorised except that under the 1923 Act, § 7 (1)—v. § 3 (2). The notice must be in the form set out in Schedule I.

In a case where a house is let at a rent less than the standard rent, although, as has been seen (*ante*, p. 14) there is no power to increase

Permitted Increases in Rent—*continued.*

the rent up to the standard rent against the will of the tenant, the increases permitted by this section are calculated upon the basis of the net rent, but when determined are added, not to the standard rent, but to the rent at which the premises were let. *Dufty* v. *Palmer* [1924] 2 K. B. 35.

[1] The rent is increased by the service of a notice irrespective of any agreement by the tenant to pay the increased rent—*The Cork Improved Dwellings Co.* v. *Barry* [1919] 2 I. R. 244; and the landlord is entitled to increase the rent in respect of the increase in the amount of the poor rate, but not in respect of the increase in the amount of the rates levied under local Acts incorporating the Towns Improvement Clauses Act, 1847 (10 & 11 Vict. c. 34)—*Ibid.*

The relevance of the maximum rents recoverable, in respect of houses to which the Increase of Rent, &c. Act, 1920, applies, to the question what is the proper assessment of such houses for rating purposes has been considered in some detail in the Scottish Courts, and the following is a brief résumé of their decisions:—

The landlord of a house within the 1920 Act cannot claim that the house is of no value for the purpose of assessment, if the statutory tenant claims to remain in possession, upon the ground that he would eject his tenant and demolish the house as uninhabitable, if it were not within the Act—*Alexander's Trustees* v. *Assessor for Ayrshire* [1922] Scots L. T. 275.

Where a landlord who is entitled by virtue of the 1920 Act to increase the rent of a dwelling-house does not in fact do so, the house should be assessed under the Valuation of Lands (Scotland) Act, 1854 (17 & 18 Vict. c. 91), § 6, upon the basis of the rent at which it is in fact let, not upon that of the rent at which the 1920 Act allows it to be let. If the assessor wishes to assess the house at the higher figure, he must prove that the landlord is not acting *bona fide* in retaining the house at its former rent—*Anderson* v. *Assessor for Peebles* [1921] 1 Scots L. T. 148.

Cf. also *Smith* v. *Assessor for Edinburgh* and *Inglis* v. *The Same*, [1922], both reported at 59 Scots L. R. 290.

But, *secus*, if an owner occupies his own house. In such a case, in the absence of evidence to the contrary, the generally recognised increase in the value of houses and the permission to increase rent given by the 1920 Act are reasonable grounds for increasing the assessment—*Naismith* v. *Assessor for Renfrew* and *Kerr* v. *The Same*, both reported at [1921] 1 Scots L. T. 265.

If a landlord gives notice of increase during the year of assessment, the assessor is entitled to take into consideration such increased rent in respect of that part of the year of assessment as to which the notice of increase of rent is operative, for the purpose of determining the value of

the asesssable property—*M'Garrity* v. *Assessor for Lanarkshire* [1921] 1 Scots L. T. 357.

Where the assessment of a house has been raised in consequence of the service by the landlord upon the tenant of a notice of increase of rent which subsequently turns out to be invalid, the tenant has no remedy against his landlord for causing his assessment to be increased—*Kennedy* v. *Campbell* [1923] Scots L. T. (Sh. Ct. Rep.) 31.

Where the relationship is that of master and servant and not landlord and tenant, the deduction from salary made by the employer cannot be treated as the standard rent of a dwelling-house occupied by the servant for the purpose of assisting the rating authorities in fixing the assessment—*Pollock* v. *Assessor for Inverness* [1923] S. C. 693.

So far as England is concerned it has been held by the House of Lords in the only reported case upon this point that in assessing a house coming within the 1920 Act, regard need not be had to the limit of rent imposed by the Act, for the gross value is purely a hypothetical measure of value to the occupier—*Roberts* v. *Assessment Committee of Poplar Quarter Sessions* [1922] 2 A. C. 93.

[2] For the application of the words "for the time being payable," *cf.* the case of *W. H. Sutton & Sons* v. *Holleston* [1918] W. N. 237. *E.g.*, if the rates for the year 1914 were £1, and the rates for the year 1920 are £1 10s., one fifty-second part of 10s. may be added to each week's rent during 1920. The rating period for 1914 will be that which includes August 3, *e.g.*, June 25, 1914, to June 24, 1915. If that be so, the rating period for 1920, with which comparison is made, must be the corresponding one, *i.e.*, June 25, 1920, to June 24, 1921.

If the rates payable by the landlord are reduced, and the landlord has increased the rent as authorised by this paragraph, he must correspondingly reduce the rent, for the increase hereby permitted is authorised only up to the amount of the increased rates for the time being payable—*Strickland* v. *Palmer* [1924] 2 K. B. 572.

A landlord is entitled to increase the rent by the amount of actual increase in the rates, not only where such increase is due to an increase in the rates, but also where it is caused by an increase in the rateable value of the premises—*Steel* v. *Mahoney* [1918] W. N. 253.

Where rates were increased after August 3, 1914, but before the 1915 Act came into force, the landlord was held unable to continue to charge the tenant that increase after the 1915 Act came into force, unless and until he gave notice as required by § 1 (1) (vi) of that Act. *Cf.* § 3 (2) of the 1920 Act—*Bridges* v. *Chambers* [1919] 88 L. J. K. B. 500. *Cf.* also *Wortley* v. *Mann* [1916] W. N. 390.

Where a landlord is allowed a commission by the overseers under the Poor Rate Assessment and Collection Act, 1869 (32 & 33 Vict. c. 41), § 3, he is not entitled under § 1 (1) (iv) of the 1915 Act (corresponding to § 2 (1) (*b*) of the 1920 Act) to increase the rent by the amount of increase in the actual rates, but only by the amount of increase in the

Permitted Increases in Rent—*continued.*

net sum payable by him after deducting commission—*Nicholson* v. *Jackson* [1921] 90 L. J. K. B. 1121.

Where a new and increased rate is not made until part of the rateable period has elapsed, a landlord can only recover the amount of the weekly increase in respect of those weeks which occur subsequent to the giving by him of the notice required by § 3 (2), *e.g.*, if the rates for the half-year ending September 30 are not made until May 17 the landlord can only recover one twenty-sixth part of the half-yearly increase in respect of each week commencing May 25, upon the assumption that he gives the notice required by § 3 (2) as soon as the increased rate is made—*Cardiff Corporation* v. *Isaacs* and *The same* v. *Crosta*, both reported in [1921] W. N. 165.

He may, however, continue to demand this increase after September 30, until a new rate is made.—*Ibid.*

[3] Dwelling-houses to which the enactments repealed by this Act applied are houses or parts of houses let as separate dwellings where such letting does not include any land other than the site of the dwelling-house and a garden or other premises within the curtilage of the dwelling-house, and where neither the annual amount of the standard rent nor the rateable value of the house or part of the house exceeds :—

(*a*) in the case of a house situated in the metropolitan police district, including the City of London, seventy pounds;

(*b*) in the case of a house situated in Scotland, sixty pounds;

(*c*) in the case of a house situated elsewhere, fifty-two pounds. (1915 Act, § 2 (2) and 1919 Act, § 4.)

[4] The increase permitted by § 2 (1) (*d*) is part of the rent for the purposes of the assessment of a landlord to income tax under Schedule A of the Income Tax Act, 1918 (8 & 9 Geo. 5. c. 40), and is not a mere indemnity for the increased cost of repairs—*Biddle* v. *Morris* [1924] 2 K. B. 490.

[5] The landlord is deemed to be responsible for any repairs for which the tenant is under no express liability—v. § 2 (5).

If a tenant covenants to keep premises in good and tenantable repair (fair wear and tear excepted), the landlord cannot claim to be responsible for the whole of the repairs, so as to entitle him to increase the standard rent by the 25 per cent. authorised by § 2 (1) (*d*) (i), even though the house in question be one to which the Housing, Town Planning, &c., Acts apply (the relevant provisions of which are set out hereunder). For the standard of repair required under those Acts is much lower than the standard of "good and tenantable repair," and therefore, even though the landlord complies with his statutory obligation (assuming he is unable to contract out of it), a further obligation would still be left for the tenant to bear—*Jones* v. *Geen* [1925] 1 K. B. 659.

The Housing, Town Planning, &c., Act, 1909 (9 Edw. 7. c. 44), § 14, enacts:

"In any contract made after" December 3, 1909, "for letting for habitation a house or part of a house at a rent not exceeding:—

(*a*) in the case of a house situate in the administrative county of London, forty pounds;

(*b*) in the case of a house situate in a borough or urban district with a population according to the last census for the time being of fifty thousand or upwards, twenty-six pounds;

(*c*) in the case of a house situate elsewhere, sixteen pounds;

there shall be implied a condition that the house is at the commencement of the holding in all respects reasonably fit for human habitation, but the condition aforesaid shall not be implied when a house or part of a house is let for a term of not less than three years upon the terms that it be put by the lessee into a condition reasonably fit for occupation, and the lease is not determinable at the option of either party before the expiration of that term."

And by § 15 (1) of the same Act:—"The last foregoing section shall, as respects contracts to which that section applies, take effect as if the condition implied by that section included an undertaking that the house shall, during the holding, be kept by the landlord in all respects reasonably fit for human habitation."

The above quoted § 14 extends § 75 of the Housing of the Working Classes Act, 1890 (53 & 54 Vict. c. 70), the provisions of which are set out on p. 99, *infra*, and does not extend to Ireland.

By the Housing, &c., Act, 1923 (13 & 14 Geo. 5. c. 24), § 10 (1), the Housing, Town Planning, &c., Act, 1909, §§ 14 and 15, shall have effect *as respects letting for habitation after the passing of that Act* (*i.e.*, July 31, 1923) as though § 14 (*b*) were omitted and "twenty-six" substituted for "sixteen" in § 14 (*c*).

In the application of these Acts to Scotland, by the Housing, Town Planning, &c., Act, 1909, § 53 (15), in § 14 the limit of rent is to be read as £16, and by the Housing, &c., Act, 1923, § 23 (9), "twenty-six" is to be substituted for "sixteen" as respects letting for habitation after the passing of that Act.

A landlord cannot contract out of his liability under the Housing of the Working Classes Act, 1890, § 75, v. Housing of the Working Classes Act, 1903 (3 Edw. 7. c. 39), § 12, but whether he can contract out of §§ 14 and 15 of the 1909 Act appears doubtful in spite of §§ 47 (1) and 76 (1) of that Act, and the Interpretation Act, 1889 (52 & 53 Vict. c. 63), § 38 (1), set out at p. 100, *infra*. *Cf.* Halsbury's Laws of England, vol. 18, p. 503, and Woodfall, Landlord and Tenant, 21st edition, p. 217. *Contra, vide* Willis, Housing and Town Planning, 2nd edition, pp. 177-178.

As to the meaning and extent of the administrative county of London, v. Halsbury's Laws of England, vol. 20, p. 393, note (*h*).

Permitted Increases in Rent—*continued.*

[6] The increase permitted by § 2 (1) (*d*) (ii) is not recoverable until it has either been agreed to by the tenant or determined by the county court. The amount must have been so ascertained at the date when the notice of intention to increase the rent is served—*Bourne* v. *Litton* [1924] 2 K. B. 10.

An agreement by the tenant subsequent to the date of the service does not validate the notice.—*Ibid.*

The short effect of this sub-section [§ 2 (1)] may perhaps be best explained with an illustration. Assume a house within the metropolitan police district to have been let at £100 and rated at £70 a year on August 3, 1914, the landlord paying rates and doing repairs. Since August 4, 1914, the landlord has spent £100 on structural alterations, and another £100 since July 2, 1920.

The rates in 1914 were £25; they are now £50 per annum.

Assuming the landlord but for this Act would be entitled to obtain possession of the house (v. § 3 (1)), and the required notice had been given to the tenant (v. § 3 (2)), the landlord could increase the rent as under:—

£100.	Standard rent.
add £6.	*I.e.*, 6% on £100 expended since August 4, 1914, on structural alterations.
add £8.	*I.e.*, 8% on £100 expended in like manner since July 2, 1920.
add £25.	Increased rates.
add £11 5s.	*I.e.*, 15%* on £75 net rent (*i.e.*, £100 standard rent less £25 rates paid in 1914).
add £18 15s.	*I.e.*, 25% on £75 net rent.
£169.	Total present rent.

If the tenant in the illustration given sub-lets part of the house, and the sub-tenant enjoys the protection of the Acts, the tenant may increase his sub-tenant's rent above the standard rent by 10 per cent. of the net rent of the part so sub-let in addition to the increases permitted by § 2 (1); and the landlord may increase the tenant's rent by half that amount. (v. 1923 Act, § 7 (1), *supra*, p. 16.)

The provisions of § 3 (2) do not apply to an increase permitted under the 1923 Act, § 7 (1). *Ibid.*

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* Note that the house in the illustration is one coming within the Increase of Rent Acts for the first time by virtue of the 1920 Act. If it had been a house coming within either of the former Acts the landlord could only have added 5 per cent. of the net rent prior to, and a further 10 per cent. after, July 2, 1921.

[**1920 Act, § 2 (2).**]—(2) At any time or times, not being less than three months after the date of any increase permitted by paragraph (*d*) of the foregoing sub-section, the tenant or the sanitary authority may apply to the county court [1] for an order suspending such increase, and also any increase under paragraph (*c*) of that sub-section, on the ground that the house is not in all respects reasonably fit for human habitation, or is otherwise not in a reasonable state of repair.[2]

The court on being satisfied by the production of a certificate of the sanitary authority [3] or otherwise that any such ground as aforesaid is established, and on being further satisfied that the condition of the house is not due to the tenant's neglect or default or breach of express agreement, shall order that the increase be suspended until the court is satisfied, on the report of the sanitary authority or otherwise, that the necessary repairs (other than the repairs, if any, for which the tenant is liable) have been executed, and on the making of such order the increase shall cease to have effect until the court is so satisfied.

[**1923 Act, § 5 (1).**]—5. *Suspension of increase of rent on ground of disrepair.*—(1) Where the tenant of a dwelling-house to which the principal Act applies has obtained from the sanitary authority a certificate [3] that the house is not in a reasonable state of repair, and has served a copy of the certificate upon the landlord, it shall be a good defence to any claim against the tenant for the payment of any increase of rent permitted under paragraph (*c*) or paragraph (*d*) of sub-section (1) of section two of the principal Act in respect of any subsequent rental period that the house was not in a reasonable state of repair during that period, and in any proceedings against the tenant for the enforcement of such claim (including proceedings for recovery of possession or ejectment on the ground of non-payment of rent so far as the rent unpaid includes such increase), the production of the said certificate shall be sufficient evidence that the house was and continues to be in the condition therein mentioned unless the contrary is proved:

Provided that this section shall not apply in any case where

Permitted Increases in Rent—*continued.*

and so far as the condition of the house is due to the tenant's neglect or default or breach of express agreement.

[**1923 Act, § 5 (2).**]—(2) When, after the issue of any such certificate, the landlord has executed to the satisfaction of the sanitary authority the repairs which require to be executed in order to put the dwelling-house into a reasonable state of repair, the authority shall, on the application of the landlord and upon payment of a fee of one shilling, issue a report to that effect.

[**1923 Act, § 18 (1).**]—18. *Certificates of sanitary authorities and definition of repairs.*—(1) For the purposes of the principal Act and this Act, a certificate of a sanitary authority as to the condition of a dwelling-house shall specify what works (if any) require to be executed in order to put the dwelling-house into a reasonable state of repair, and on any application to a sanitary authority for a certificate or report for the purposes aforesaid a fee of one shilling shall be payable, but if the authority, as a result of such application, issues a certificate to a tenant, the tenant shall be entitled to deduct the fee from any subsequent payment of rent.

Cf. 1919 Act, § 2 (1).

For definition of "tenant," v. § 12 (1) (*f*) and (*g*); "repairs," v. § 2 (5); "landlord," v. § 12 (1) (*f*) and (*g*).

"A dwelling-house to which the principal Act applies," v. § 12 (2) and (9).

For form of summons under this sub-section, v. Appendix III., Form 7.

For form of order under this sub-section, v. Appendix III., Form 8.

The sections set out above appear to give to the tenant two remedies if the landlord neglects his obligation to repair:—

(*a*) Under the 1920 Act, § 2 (2), he may apply to the county court for an order suspending the increases permitted by § 2 (1) (*c*) and (*d*) until the court is satisfied that the necessary repairs have been executed; or

(*b*) Under the 1923 Act, § 5 (1), he may serve a copy of the certificate of the sanitary authority upon his landlord and refuse to pay the above-mentioned increases until the necessary repairs have been executed.

[1] The High Court has no jurisdiction under this sub-section—*X Rays, Lim.* v. *Armitage* [1922] W. N. 27.

[2] The Court must determine whether the house is not reasonably fit for human habitation or not in a reasonable state of repair. The certificate of the sanitary authority is not conclusive—*Britton* v. *Anderson* [1922] Scots L. T. (Sh. Ct. Rep.) 18. It is, however, *primâ facie* evidence to the extent and for the purposes stated in the 1923 Act, § 5 (1).

[3] An instrument purporting to be a certificate or report of a sanitary authority and to be signed by an officer of that authority shall, without further proof, be taken to be a certificate or report of that authority unless the contrary is proved. [1923 Act, § 18 (3).]

A sanitary authority may appoint a committee for the purposes of the principal Act and this Act, and may delegate, with or without restrictions, to such committee or to an existing committee of the authority all or any of the powers of the authority under the principal Act or this Act. [1923 Act, § 18 (4).]

[**1920 Act, § 2 (3).**]—(3) Any transfer to a tenant of any burden or liability previously borne by the landlord shall, for the purposes of this Act, be treated as an alteration of rent, and where, as the result of such a transfer, the terms on which a dwelling-house is held are on the whole less favourable to the tenant than the previous terms, the rent shall be deemed to be increased, whether or not the sum periodically payable by way of rent is increased, and any increase of rent in respect of any transfer to a landlord of any burden or liability previously borne by the tenant where, as the result of such transfer, the terms on which any dwelling-house is held are on the whole not less favourable to the tenant than the previous terms, shall be deemed not to be an increase of rent for the purposes of this Act: Provided that, for the purposes of this section, the rent shall not be deemed to be increased where the liability for rates is transferred from the landlord to the tenant, if a corresponding reduction is made in the rent.

Cf. 1915 Act, § 1 (1) (iii).

For definition of "landlord" and "tenant," v. § 12 (1) (*f*) and (*g*).

For form of summons for determination of a question under this sub-section, v. Appendix III., Form 1.

For form of certificate on application under this sub-section, v. Appendix III., Form 3.

Where a public-house is let subject to a tie, the tie is to be dis-

Permitted Increases in Rent—*continued.*

regarded in determining the "rent"—*Glossop* v. *Ashley* [1922] 1 K. B. 1. So, too, a discount for goods purchased allowed by a landlord to a tenant is no part of the rent, nor is it a burden or liability within the meaning of this sub-section—*W. H. Brakspear & Sons, Lim.* v. *Barton* [1924] 2 K. B. 88.

By virtue of the 1920 Act, § 2 (6), where a new lease imposes upon a tenant more onerous provisions than were contained in the former lease, the matter must be referred to the county court. The High Court has no jurisdiction to determine what increased or decreased sum ought to be paid by way of rent.—*Ibid.*

An undertaking by a tenant to give to his landlord the use of certain rooms in a house let to him, is not a transfer of liability to the tenant within the meaning of this sub-section—*Hornsby* v. *Maynard* [1925] 1 K. B. 514. It appeared to be admitted in that case that, on the other hand, an undertaking to pay the rates formerly paid by the landlord was such a transfer.

[**1920 Act, § 2 (4).**]—(4) On any application to a sanitary authority for a certificate or report under this section a fee of one shilling shall be payable, but, if the authority as the result of such application issues such a certificate as aforesaid, the tenant shall be entitled to deduct the fee from any subsequent payment of rent.

Cf. 1919 Act, § 2 (2), and 1923 Act, § 18 (1).
For definition of "tenant," v. § 12 (1) (*f*) and (*g*).

[**1920 Act, § 2 (5).**]—(5) For the purposes of this section, the expression "repairs" means any repairs required for the purpose of keeping premises in good and tenantable repair, and any premises in such a state shall be deemed to be in a reasonable state of repair, and the landlord shall be deemed to be responsible for any repairs for which the tenant is under no express liability.

[**1923 Act, § 18 (5).**]—18. (5) For the purposes of this Act, the expression "repairs" means any repairs required for the purpose of keeping premises in good and tenantable repair, and any premises in such a state shall be deemed to be in a reasonable state of repair, and the landlord shall be deemed to

be responsible for any repairs for which the tenant is under no express liability.

This definition of "repairs" was first introduced by the 1920 Act.

For definition of "landlord" and "tenant," v. § 12 (1) (*f*) and (*g*).

"Good repair" and "tenantable repair" are "much the same thing"—*per* Lord Esher, M.R., in *Proudfoot* v. *Hart* [1890] 25 Q. B. D. 42, at p. 51.

To keep premises in good tenantable repair is to keep them in such repair as, having regard to the age, character and locality of the house, would make it reasonably fit for the occupation of a tenant of the class who would be likely to take it. *Ibid.* *Cf.* also *Crawford* v. *Newton* [1886] 36 W. R. 54, and *Anstruther-Gough-Calthorpe* v. *McOscar* [1924] 1 K. B. 716.

[**1920 Act, § 2 (6).**]—(6) Any question arising under sub-section (1), (2) or (3) of this section shall be determined on the application either of the landlord or the tenant by the county court, and the decision of the court shall be final and conclusive.[1]

[**1923 Act, § 11 (1).**]—11. *Power of county court to determine questions as to standard rent, &c.*—(1) The county court shall have power on the application of a landlord or a tenant to determine summarily any questions as to the amount of the rent, standard rent or net rent of any dwelling-house to which the principal Act applies, or as to the increase of rent permitted under that Act or this Part of this Act.

Cf. 1915 Act, § 1 (1) (iii).

For definition of "landlord" and "tenant," v. § 12 (1) (*f*) and (*g*); "standard rent," v. § 12 (1) (*a*); "net rent," v. § 12 (1) (*c*).

For dwelling-houses to which the principal Act applies, v. § 12 (2) and (9).

For increases of rent permitted, v. § 2 (1).

For forms appropriate for summons, v. Appendix III., Forms 1 and 7.

For form of certificate on application under § 2 (1) or (3), v. Appendix III., Form 3.

For form of order under § 2 (2), v. Appendix III., Form 8.

[1] This sub-section has been held to refer only to cases in which application is made to the county court judge as arbitrator on questions of administration. It does not interfere with the general

Permitted Increases in Rent—*continued.*

right of appeal to the High Court in an action for arrears of rent—*Strickland* v. *Palmer* [1924] 2 K. B. 572.

A county court judge had no jurisdiction to decide the standard rent of premises, if no consequential relief was asked for—*Broomhall* v. *Property Agents and Owners, Lim.* [1922] 1 K. B. 311, but provision is now made by the 1923 Act, § 11 (1), for such a determination.

By § 2 (2), the sanitary authority may make an application to the Court. If it does so, the determination of the Court is none the less final and conclusive, although the words of § 2 (6) refer only to an application either "of the landlord or the tenant"—*Glasgow Corporation* v. *Mickel* [1922] S. C. 228.

"Landlord," in § 2 (6), in relation to a sub-tenancy shall be taken to include not only the person who is immediate landlord of the sub-tenant but also the landlord of that person. [1923 Act, § 7 (3).]

LIMITATION AS TO PERMITTED INCREASES IN RENT.

[1920 Act, § 3 (1).]—3. (1) Nothing in this Act shall be taken to authorise any increase of rent except in respect of a period during which but for this Act the landlord would be entitled to obtain possession,[1] or any increase in the rate of interest on a mortgage [2] except in respect of a period during which, but for this Act, the security could be enforced.

This sub-section was newly introduced by the 1920 Act, and declaratory only. *Cf. Connolly* v. *Whelan* [1920] 54 Ir. L. T. 18; *Smith* v. *Lloyd* [1923] W. N. 197.

For definition of "landlord," v. § 12 (1) (*f*) and (*g*); "mortgage," v. § 12 (1) (*h*).

Reference must be made to the Rent Restrictions (Notices of Increase) Act, 1923, in considering any question arising under this section—v. pp. 103—109, *infra.*

[1] According to the general law, on the determination of a tenancy, the landlord and tenant may enter into such new agreement as they please. This Act restricts the power of the landlord to bring pressure upon his tenant by reason of the shortage of house accommodation, but does not interfere with the enjoyment by the tenant of the benefit of an existing tenancy. If, therefore, the contractual tenancy is subsisting at the time of the expiry of the notice of increase of rent, the notice of increase is inoperative. A notice to determine the contractual tenancy is necessary, and no increase is due or recoverable in respect of a period prior to its determination. *Newell* v. *Crayford Cottage Society* [1922] 1 K. B. 656; *Kerr* v. *Bryde* [1923] A. C. 16; *Felce* v. *Hill* [1923]

W. N. 235. This was so under the former Acts. *Smith* v. *Lloyd* [1923] W. N. 197.

If, however, the contractual tenancy is for a term of years or other fixed term which has expired since the passing of an Increase of Rent, &c., Act which applied to the house in question, the mere retention of possession by the tenant and the acceptance of rent by the landlord does not create a new contractual tenancy. The tenant remains as a statutory tenant—*Davies* v. *Bristow* and *Penrhos College, Lim.* v. *Butler* [1920] 3 K. B. 428; and no contractual tenancy being in existence, the landlord may increase the rent by the service of a notice of increase without serving a notice to quit—*Felce* v. *Hill* [1923] W. N. 235.

The notice to quit and the notice of increase of rent may take effect from the same day, and may be served concurrently upon the tenant—*Hill* v. *Hasler* [1921] 3 K. B. 643.

The force of this provision may well be exemplified by assuming that the landlord of a house let on a yearly tenancy ending in September desires to take advantage of the power given him by this Act to increase the rent of the house.

Such a tenancy is only determinable, in the absence of breach of covenant or other like reason, by six months' notice to quit expiring in September (unless the tenancy agreement provides for other length of notice). The result, therefore, was that a landlord in such a case could only increase the rent as from September, 1921, at the earliest. The notice of increase of rent had to be served if under § 2 (1) (*a*) (*c*) or (*d*) four weeks, and if under § 2 (1) (*b*) one week, before the notice to quit expired.

The position, however, has been modified by the provisions of the Rent Restrictions (Notices of Increase) Act, 1923 (13 & 14 Geo. 5. c. 13), which statute will be found set out at pp. 103—109, *infra*.

Many landlords served notices of intention to increase the rent which were valid in themselves but not preceded by notices to quit. They were therefore in many cases inoperative, and the 1923 (Notices of Increase) Act provides that such notices of increase shall operate as notices to quit expiring at the earliest date at which a valid notice to quit could have been expressed to expire if served at the time of the service of the notice of increase.

The increases of rent rendered valid by the provisions of that Act are called "validated increases of rent," and landlords are thereby protected from actions by their tenants for recovery of overpaid rent under § 14 (1) of the 1920 Act in cases where the tenants paid rent in accordance with the terms of notices of increase even though they were not preceded by notices to quit. It is to be observed, however, that the requirements of § 3 (1) are not done away with, and consequently in respect of the period between the expiry of the notice of increase of rent and the earliest date at which a valid notice to quit could have been

Limitation as to Permitted Increases in Rent—*continued.*

expressed to expire, if served at the time of the service of the notice of increase, the increase of rent is not validated.

Validated increases of rent if not already paid by the tenant are not recoverable as arrears of rent in respect of any period before December 1, 1922, and provision is made for the payment of such arrears as are recoverable by instalments: v. 1923 (Notices of Increase) Act, § 1 (1) and (2) (1), at pp. 103—106, *infra*, where the matter will be found more fully dealt with.

[2] The date from which a mortgagee may increase the rate of interest on a mortgage is very doubtful. It would appear that to foreclose is to enforce the security (*Welby* v. *Parker* [1916] 2 Ch. 1). A foreclosure action can be commenced, in the absence of a contrary covenant, upon non-payment of the mortgage debt when due, and when no date is fixed, after reasonable notice. (Fisher on Mortgages, 6th edition, para. 980.)

From this it would appear that a mortgagee may increase the rate of interest on a mortgage in respect of a period during which, but for this Act, he could commence a foreclosure action. *Quære* whether he must so increase the rate in the same manner as a mortgagee before the Acts would have had to proceed, that is to say, call in the mortgage and offer to re-lend at a higher rate of interest.

It is submitted that this is the true view. The words of § 3 (1) are inhibitory and not permissive. The mortgagee, apart from the Act, would have been able to increase the rate of interest to an extent limited only by the degree of embarrassment of the mortgagor. His power to increase the rate is limited by the Act, but he is not authorised to effect the increase except in accordance with the general law.

In the absence of judicial determination, however, no confident statement of the law can be made.

[**1920 Act, § 3 (2).**]—(2) Notwithstanding any agreement to the contrary, where the rent of any dwelling-house to which this Act applies is increased, no such increase shall be due or recoverable until or in respect of any period prior to the expiry of four clear weeks, or, where such increase is on account of an increase in rates, one clear week, after the landlord has served upon the tenant a valid notice [1] in writing of his intention to increase the rent, which notice shall be in the form contained in the First Schedule to this Act, or in a form substantially to the same effect. If a notice served as aforesaid contains any statement or representation which is false or misleading in any material respect, the landlord shall be liable on summary conviction to a fine not exceeding ten pounds unless he proves

that the statement was made innocently and without intent to deceive. Where a notice of an increase of rent which at the time was valid has been served on any tenant, the increase may be continued without service of any fresh notice on any subsequent tenant.

[**1923 Act, § 6 (1).**]—6. *Notice of increase of rent.*—(1) The county court, if satsified that any error or omission in a notice of intention to increase rent,[2] whether served before or after the passing of this Act, is due to a bona fide mistake[3] on the part of the landlord, shall have power to amend[4] such notice by correcting any errors and supplying any omissions therein, which, if not corrected or supplied, would render the notice invalid, on such terms and conditions as respects arrears of rent or otherwise as appear to the court to be just and reasonable, and, if the court so directs, the notice as so amended shall have effect and be deemed to have had effect as a valid notice.

[**1923 Act, § 8 (1).**]—8. *Limitation on recovery of overpayments or arrears.*—(1) No increase of rent which becomes payable by reason of an amendment of a notice of increase made by order of the county court under this Act shall be recoverable in respect of any rental period which ended more than six months before the date of the order.

Cf. 1915 Act, § 1 (1) (vi); 1919 Act, § 5 (3).

For definition of "landlord" and "tenant," v. § 12 (1) (*f*) and (*g*); "rates," v. § 12 (1) (*d*).

For dwelling-houses to which this Act applies, v. § 12 (2) and (9).

For increases permitted, v. § 2 (1).

Four clear weeks' notice must be given of increases under § 2 (1) (*a*), (*c*) and (*d*), and one clear week's of increases under § 2 (1) (*b*).

For other criminal responsibility of the landlord, v. §§ 8 (2), 10, 11, 14 (2), and 1923 (Notices of Increase) Act, § 2 (2).

For criminal responsibility of tenants, v. § 15 (2); and 1923 Act, § 7 (2).

"The passing of this" (1923) "Act," *i.e.*, July 31, 1923.

[1] In the case of *Wortley* v. *Mann* [1916] W. N. 390, decided under the 1915 Act, § 1 (1) (vi), a landlord sought to justify an increase of rent on the ground that he had since the commencement of the war incurred expenditure on improvements within § 1 (1) (ii) of the 1915

Limitation as to Permitted Increases in Rent—*continued.*

Act (reproduced in § 2 (1) (*a*) of the present Act). He had, however, given no notice in writing. The tenant paid the increased rent for a time, and then refused to pay the increase. The landlord then claimed possession. The tenant tendered the standard rent.

The Divisional Court held (1) that the increase dealt with in § 1 (1) (ii) is referred to in § 1 (1) (vi) as an increase "by this Act permitted," and (2) that, no notice having been given, such increase was irrecoverable.

Cf. also *Bridges* v. *Chambers* [1919] 88 L. J. K. B. 500.

A notice of increase of rent is necessary even though a new tenancy is being created—*Schmit* v. *Christy* [1922] 2 K. B. 60. In that case the plaintiff let to the defendant a part of a house at a rent of 35s. per week from January 1, 1921. Up to that time the tenant had been a subtenant of the same rooms at a lower rental. No notice of increase was given. It was held that the increase was irrecoverable.

Such an increase is irrecoverable even though the agreement for the new tenancy was made before the Act came into operation, if the increased rent is first payable in respect of a period commencing after March 25, 1920—*Michael* v. *Phillips* [1924] 1 K. B. 16, v. p. 13, *supra.*

Notices of increase of rent may be served from time to time, so far as authorised by this Act, if the tenant has once been made a statutory tenant—*Shuter* v. *Hersh* [1922] 1 K. B. 438.

The notice of increase of rent must be a "valid notice," that is to say, it must state, *inter alia*, the right date from which the landlord is entitled to the increased rent. Where, therefore, a landlord serves a notice of increase of rent upon his tenant before he serves a notice to quit, and the latter notice expires after the increased rent is stated by the notice of increase to be payable, the landlord cannot recover the increased rent—*Peizer* v. *Federman* [1921] W. N. 320.

But the right date is none the less stated because the increased rent is expressed to be payable in respect of a period commencing more than four weeks after the notice is served—*Hill* v. *Hasler* [1921] 3 K. B. 643.

So, likewise, the notice of increase must state the correct increase. If a landlord claims 15 per cent. under § 2 (1) (*c*) when he is entitled only to 5 per cent., the notice is invalid and no increase is recoverable—*Penfold and Thomson* v. *Newman* [1922] 1 K. B. 645.

Cf., however, *Ellis* v. *Elliott* [1923] 2 Ir. R. 45.

The House Letting and Rating (Scotland) Act, 1920 (10 Geo. 5. c. 8), § 1 (1) provides that increases in occupier's assessments for which the owner is responsible shall be deemed to be lawful additions to the rent. So far as Scotland is concerned, therefore, the increases under § 2 (1) (*b*) of the Increase of Rent, &c., Act, 1920, of which notice is required to be given by the landlord to the tenant under § 3 (2) of that Act, have

there been held to be only increases of owner's rates—*Kennedy* v. *Campbell* [1923] Scots L. T. 31.

[2] It has been held in Scotland that a document not purporting to comply with § 3 (2), *e.g.*, not stating to whom it is sent, or the premises to which it refers, or the amount of increase of rent claimed, is not susceptible of amendment. *Stewart* v. *Currie* [1925] Scots L. T. (Sh. Ct. Rep.) 17. So, too, it must not contain any demands upon the tenant of a nature not authorised by the statutory form of notice. *Ibid.* and *Currie* v. *Jack*, [1925] Scots L. T. (Sh. Ct. Rep.) 36.

[3] The error must be due to mistake, that is, the landlord must have thought it correct when he did it: the omission must have been thought not required to be stated. *Stewart* v. *Currie, supra.*

Bona fides is not shown merely by proof of lack of *mala fides.* There must have been a reasonably careful attempt to avoid errors and omissions. *Ibid.*

[4] The application to amend may be made by some person other than the landlord who served the notice. *Ibid.*

The notice when amended will bind persons not parties to the application to amend, *e.g.*, subsequent tenants. *Ibid.*

Cf. also *Wilson* v. *Scanlan* [1925] Scots L. T. (Sh. Ct. Rep.) 20; *Stewart* v. *Woods, Ibid.* at p. 22, and *Lamb* v. *M'Gettigan, Ibid.* at p. 23.

A county court judge has power to amend a notice under this section, although the notice was not preceded by a notice to quit—*Williams* v. *Britannic Merthyr Steam Coal Co., Lim.* [1924] 2 K. B. 334.

Even though a notice is so amended, the tenant, if his action was commenced before January 31, 1924, can recover as overpaid any rent paid in respect of a rental period which ended more than six months before the date of the order of amendment, for the 1923 Act, §§ 6 (1) and 8 (1) are to be read together and it is only by reason of the amendment that such rent has ceased to be irrecoverable by the landlord and recoverable by the tenant. *Ibid.*

[**1920 Act, § 3 (3).**]—(3) A notice served before the passing of this Act of an intention to make any increase of rent which is permissible only by virtue of this Act shall not be deemed to be a valid notice for the purpose of this section.

"Before the passing of this Act," *i.e.*, July 2, 1920.

PERMITTED INCREASE IN RATE OF MORTGAGE INTEREST.

[**1920 Act, § 4.**]—4. The amount by which the increased rate of interest payable in respect of a mortgage to which

Permitted Increase in Rate, &c.—*continued.*

this Act applies may exceed the standard rate, shall be an amount not exceeding one per cent. per annum[1]:

Provided that—

(*a*) the rate shall not be increased so as to exceed six and a half per cent. per annum; and

(*b*) except in the case of a dwelling-house to which this Act applies but the enactments repealed by this Act did not apply, the increase during a period of one year after the passing of this Act shall not exceed one-half per cent. per annum.

Cf. 1919 Act, § 3.

For definition of "mortgage," v. § 12 (1) (*h*); "standard rate of interest," v. § 12 (1) (*b*).

For mortgages to which this Act applies, v. § 12 (4).

An illustration may most simply explain the operation of this section. Assume a mortgagor to have borrowed £1,000 at 5½ % on a house in the metropolitan police district let at £100 and rated at £70 per annum in 1914. The mortgagee may increase the rate to 6½ %. If the original rate of interest had been 6 %, he could have increased it no more than to 6½ %.

Note that the house in the illustration is one coming within the Increase of Rent, &c., Acts for the first time by virtue of the 1920 Act. It it had been a house coming within either of the former Acts the landlord could only have added ½ % to the rate of interest prior to, and a further ½ % after, July 2, 1921.

As to what houses come within the former Acts, v. p. 20, *supra.*

[1] By the 1915 Act, § 1 (1) (v) it is provided: "Where the rate of mortgage interest has been increased in compliance with . . . a notice in writing demanding either repayment of the mortgage or an increased rate of interest given prior to" August 4, 1914, "such increase shall not be deemed to be an increase for the purposes of this Act."

Where, therefore, mortgage interest was increased from 4½ to 6 % in compliance with such a notice given upon June 23, 1914, the increase was valid for the purposes of the 1915 Act. But as from July 2, 1920, the date of the passing of the 1920, and the repeal of the 1915 Act, such notice ceased to be valid, and the increase authorised by the 1920 Act alone is recoverable, for the 1920 Act repeals the 1915 Act and the section above quoted makes the increase valid only "for the purposes of this" (*i.e.*, the 1915) "Act"—*Hollands* v. *Cooper* [1921] 91 L. J. Ch. 297.

FURTHER RESTRICTIONS AND OBLIGATIONS ON LANDLORDS AND MORTGAGEES.

[**1920 Act, § 5.**]—5.* (*Repealed and partially re-enacted by* 1923 *Act*, § 4, q.v.)

[**1923 Act, § 4.**]—4. *Restriction on right to possession.*—The following section shall be substituted for section five of the principal Act, namely:—

"5.—(1) No order or judgment for the recovery of possession of any dwelling-house [1] to which this Act applies, or for the ejectment of a tenant [2] therefrom, shall be made or given unless—

"(*a*) any rent lawfully due from the tenant has not been paid,[3] or any other obligation of the tenancy (whether under the contract of tenancy or under this Act) so far as the same is consistent with the provisions of this Act has been broken or not performed [4]; or

"(*b*) the tenant or any person residing or lodging with him or being his sub-tenant has been guilty of conduct which is a nuisance [5] or annoyance to adjoining occupiers, or has been convicted of using the premises or allowing the premises to be used for an immoral or illegal purpose,[6] or the condition of the dwelling-house has, in the opinion of the court, deteriorated owing to acts of waste [7] by or the neglect or default of the tenant or any such person, and, where such person is a lodger or sub-tenant, the court is satisfied that the tenant has not, before the making or giving of the order or judgment, taken such steps as he ought reasonably to have taken for the removal of the lodger or sub-tenant; or

"(*c*) the tenant has given notice to quit,[8] and in consequence of that notice the landlord has contracted to sell or let the dwelling-house or has taken any other steps as a result of which he would, in the opinion

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* The text of this section will be found at pp. 120 *et seq. infra.*

Restriction on Right to Possession—*continued.*

of the court, be seriously prejudiced if he could not obtain possession;[9] or

"(*d*) the dwelling-house is reasonably required[10] by the landlord[11] for occupation as a residence for himself, or for any son or daughter of his over eighteen years of age, or for any person bona fide residing with him, or for some person engaged in his whole time employment[12] or in the whole time employment of some tenant from him or with whom, conditional on housing accommodation being provided, a contract for such employment has been entered into, and (except as otherwise provided by this sub-section) the court is satisfied that alternative accommodation[13] is available[14] which is reasonably suitable to the means of the tenant and to the needs of the tenant and his family as regards extent, character, and proximity to place of work and which consists either of a dwelling-house to which this Act applies, or of premises to be let as a separate dwelling on terms which will afford to the tenant security of tenure reasonably equivalent to the security afforded by this Act in the case of a dwelling-house to which this Act applies; or

"(*e*) the dwelling-house is reasonably required for the purpose of the execution of the statutory duties or powers of a local authority, or statutory undertaking, or for any purpose which, in the opinion of the court, is in the public interest,[15] and the court in either case is satisfied as aforesaid as respects alternative accommodation[16]; or

"(*f*) the landlord became the landlord after service in any of His Majesty's forces during the war[17] and requires the house for his personal occupation and offers the tenant accommodation on reasonable terms in the same dwelling-house, such accommodation being considered by the court as reasonably sufficient in the circumstances[18]; or

"(*g*) the dwelling-house is required for occupation as a residence by a former tenant [19] thereof who gave up occupation in consequence of his service in any of His Majesty's forces during the war; or

"(*h*) the tenant without the consent of the landlord has at any time after the thirty-first day of July, nineteen hundred and twenty-three, assigned or sub-let the whole of the dwelling-house or sub-let part of the dwelling-house, the remainder being already sub-let; or

"(*i*) the dwelling-house consists of or includes premises licensed for the sale of intoxicating liquor, and the tenant has committed an offence as holder of the licence or has not conducted the business to the satisfaction of the licensing justices or the police authority, or has carried it on in a manner detrimental to the public interest, or the renewal of the licence has for any reason been refused;

and, in any such case as aforesaid, the court considers it reasonable to make such an order or give such judgment.[20]

"The existence of alternative accommodation shall not be a condition of an order or judgment on any of the grounds specified in paragraph (*d*) of this sub-section—

"(i) where the tenant was in the employment of the landlord or a former landlord, and the dwelling-house was let to him in consequence of that employment [21] and he has ceased to be in that employment; or

"(ii) where the court is satisfied by a certificate of the county agricultural committee,[22] or of the Minister of Agriculture and Fisheries pending the formation of such committee, that the dwelling-house is required by the landlord for the occupation of a person engaged on work necessary for the proper working of an agricultural holding, or with whom conditional on housing accommodation being provided, a contract for employment on such work has been entered into; or

"(iii) where the landlord gave up the occupation of the

Restriction on Right to Possession—*continued.*

dwelling-house in consequence of his service in any of His Majesty's forces during the war; or

" (iv) * where the [dwelling-house is reasonably required by the landlord (not being a landlord who has become landlord by purchasing the dwelling-house or any interest therein after the fifth day of May, nineteen hundred and twenty-four) for occupation as a residence for himself or for any son or daughter of his over eighteen years of age and the court is satisfied, having regard to all the circumstances of the case, including any alternative accommodation available for the landlord or the tenant, that greater hardship [23] would be caused by refusing to grant an order or judgment for possession than by granting it].

Cf. 1915 Act, § 1 (3), repealed and re-enacted with amendments by 1919 (No. 2) Act, § 1 (1). *Cf.* also 1918 Act and 1919 Act, §§ 4 (iii) and 5 (2).

For definition of " landlord " and " tenant," v. § 12 (1) (*f*) and (*g*); " let," v. § 12 (1) (*g*); " tenancy," v. § 12 (1) (*g*); " statutory undertaking," v. § 12 (1) (*i*); " statutory duties or powers," v. § 12 (1) (*i*).

For dwelling-houses to which this Act applies, v. § 12 (2) and (9).

As to the conditions of tenancy under this Act, v. § 15, which section lays at rest considerable doubts which formerly existed as to the exact nature of the tenancy where a tenant remained in possession solely by virtue of the operation of the Acts.

This Act is not an enabling but a restrictive Act. It does not, therefore, authorise anyone other than the landlord to apply for the possession of a dwelling-house. A former tenant cannot claim possession under § 5 (1) (*g*). He must persuade the landlord to make the claim on his behalf—*Goodwin* v. *Rhodes* [1921] 2 K. B. 182.

Although this section only says that " no order or judgment for the recovery of possession " of a dwelling-house or " for the ejectment of a tenant therefrom shall be made," a landlord is impliedly precluded from exercising his right to retake possession peacefully, and an injunction will issue to restrain him from so doing—*Remon* v. *City of London Real Property Co., Lim.* [1921] 1 K. B. 49; *Cruise* v. *Terrell* [1922] 1 K. B. 664.

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* This provision was substituted by the 1924 Act, § 1, for provisions (iv) and (v) of the 1923 Act, § 4, as originally enacted.

Mesne profits are payable from the date of the issue of the writ in an action for possession for breach of covenant, not from the date of the breach, entitling the landlord to forfeit the lease—*Elliott* v. *Boynton* [1924] 1 Ch. 236.

A landlord claiming possession of premises after the expiration of a tenancy is not bound in every case to include in his claim the whole of the premises, but may in a proper case, *e.g.*, where he has already resumed possession of part, limit his claim to part—*Salter* v. *Lask* [1924] 1 K. B. 754.

This section is not a statutory defence or one of which notice must be given under Order X., r. 18 of the County Court Rules, 1903. Where in an action in the county court to recover possession of a dwelling-house the evidence is sufficient to put the judge upon inquiry whether the house is one to which the Rent (Restrictions) Acts apply, he is bound, by r. 18 of the Increase of Rent (Restrictions) Rules, 1920, to inquire and determine whether the house is one within the Acts, and if so, to decide whether the Acts permit him to make an order for possession.—*Ibid.*

A valid notice of increase is deemed to be a notice to quit—1923 (Notices of Increase) Act, § 1 (1).

A landlord, therefore, will not be prevented from recovering possession, if he prove the service of such a notice, by reason merely of his failure to prove the service of a notice to quit—*Aston* v. *Smith* [1924] 2 K. B. 143.

[1] The meaning of the word "dwelling-house" was discussed in *Epsom Grand Stand Association, Lim.* v. *Clarke and Wife* [1919] W. N. 170; and the Court of Appeal held that the object of the Legislature was to include all houses which are occupied as dwelling-houses, provided they are of the class ascertained by their value as prescribed by the Act, notwithstanding that they are also used by the tenant for other purposes as well as those of a dwelling-house. *Cf.* also *Ellen* v. *Goldstein* [1920] 89 L. J. Ch. 586; *Waller & Son, Lim.* v. *Thomas* [1921] 1 K. B. 541; *McQuillan* v. *Clinton* [1921] 55 Ir. L. T. 143; *Burns* v. *Radcliffe* [1923] 2 Ir. R. 158; § 12 (2) (ii), and § 13 and notes thereon.

[2] When a tenant is adjudged bankrupt, his interest in his dwelling-house vests in his trustee in bankruptcy. He cannot, therefore, claim the protection of this Act—*Reeves* v. *Davies* [1921] 2 K. B. 486.

It is immaterial whether or not the trustee has disclaimed the lease —*ibid. per* Lord Sterndale, M.R., at p. 490.

It is equally true whether at the time of the commencement of the bankruptcy a lease was subsisting or the tenant was holding over as a statutory tenant—*Parkinson and Others* v. *Noel* [1923] 1 K. B. 117.

Where a closing order is made under the Housing, Town Planning, &c., Act, 1909 (9 Edw. 7. c. 44), and the tenant vacates the premises, his interest in them ceases and he has no legal right to retake possession of them. If he do so, the landlord can successfully recover possession,

Restriction on Right to Possession—*continued.*

and the tenant cannot claim the protection of the Increase of Rent, &c. Acts—*Blake* v. *Smith* [1921] 2 K. B. 685.

As to who is a tenant for this purpose, *vide* pp. 64 & 65, *infra.*

[3] The words "unless any rent lawfully due from the tenant has not been paid" have been substituted for the words "so long as the tenant continues to pay rent at the agreed rate as modified by the principal Act or any of the Acts amending the same" in the 1919 (No. 2) Act, § 1 (1). Interpreting those words, Lawrence, J., decided in the case of *Beavis* v. *Carman* [1920] W. N. 159, that a tenant who was in default in payment of rent at the date when the writ was issued could not remedy his default by paying into Court the sums due after issue of the writ, for the matter crystallised at the date of the writ. *Cf.* also *Benabo* v. *Horseley* [1920] 36 T. L. R. 859.

The same considerations apply under the new wording, for it has been held that the Court has jurisdiction to make an order for possession if rent lawfully due has not been paid at the time of the issue of the summons, even though the rent then unpaid is paid into Court before trial—*Brewer* v. *Jacobs* [1923] 1 K. B. 528. *Cf.* also *Chartres* v. *Muldoon* [1923] 57 Ir. L. T. 102.

But this view was doubted by the Court of Appeal in *Gill* v. *Luck* [1923] 40 T. L. R. 38.

The Common Law Procedure Act, 1852 (15 & 16 Vict. c. 76), § 212, which enacts that proceedings in ejectment for non-payment of rent shall cease on payment of rent, arrears and costs into Court, and the Conveyancing Act, 1881 (44 & 45 Vict. c. 41), § 14, which provides that as a condition precedent to re-entry notice specifying the breach complained of must be served by the landlord upon the tenant, have no application to a statutory tenancy. The tenant is holding over in such a case; the landlord is not seeking to enforce a forfeiture. The right of the tenant so to hold over is limited by the provisions of the Increase of Rent, &c. Act, 1920, § 5 (1), as amended—*Brewer* v. *Jacobs* [1923] 1 K. B. 528.

Where a "question" within § 2 (6) arises between the landlord and the tenant, no order for possession will be made upon the ground that rent lawfully due from the tenant has not been paid, pending the determination of the question as provided by § 2 (6)—*Dun Laoghaire U. D. C. v. Moran* [1921] 2 Ir. R. 494.

In the case of *Reeks* v. *Shelley* [1920] 36 T. L. R. 868, a tenant of a dwelling-house, to which the former Acts did not, but the 1920 Act did, apply, was in arrear with his rent, and the landlord gave him notice to quit expiring June 21, 1920. The Court made an order for possession with costs, but in the exercise of its discretion directed that the order should be discharged if within three weeks the tenant paid the arrears of rent and mesne profits.

Cf. also *Urkwickee* v. *Gutkin* [1921] 55 Ir. L. T. 39.

[4] The neglect to perform an implied obligation to "fire and air" a house, which the tenant occupies during summer months only, may be a ground for making an order for possession under § 5 (1) (*a*)—*Robertson* v. *Wilson* [1922] Scots L. T. (Sh. Ct. Rep.) 21.

So, too, may be the breach of a covenant to repair—*Gildea* v. *Conway* [1919] 53 Ir. L. T. 166.

Non-compliance by the tenant with his covenant to yield up possession upon the determination of the tenancy is not the breach of an obligation of the tenancy, entitling the landlord to possession under § 5 (1) (*a*), for such an obligation is inconsistent with the provisions of the Act - *Artizans', Labourers', and General Dwellings Co., Lim.* v. *Whitaker* [1919] 2 K. B. 301.

A covenant not to permit the unauthorised user of premises is not broken by a tenant, if he merely forbears to take proceedings in ejectment against his under-tenants who are using the premises in an unauthorised manner, if the premises are within the 1920 Act, and the event of such an action is therefore within the discretion of the Court; nor does the tenant commit such a breach by sympathising with the under-tenants and advising them as to their legal position—*Berton* v. *Alliance Economic Investment Co., Lim.* [1922] 1 K. B. 742.

Secus, if the premises are not within the Increase of Rent, &c., Acts —*Atkin* v. *Rose* [1923] 1 Ch. 522.

[5] By nuisance is meant "an inconvenience materially interfering with the ordinary comfort physically of human existence, not merely according to elegant or dainty modes and habits of living, but according to plain and sober and simple notions among the English people"—*per* Knight-Bruce, V.C., in *Walter* v. *Selfe* (1851) 4 D. G. & S. 315, at p. 322. *Cf.* also a Scots case decided under 1915 Act, § 1 (3)—*Ferguson* v. *Butler* [1918] 2 Scots L. T. 228, and *Nevile* v. *Hardy* [1921] 1 Ch. 404.

The "nuisance" and "deterioration" mentioned in this sub-section are distinct things, either of which, if proved against a tenant, are sufficient to deprive him of the protection of the Acts. In order to bring uncleanliness within the word "nuisance," it is necessary to show that it is a danger of infection to neighbours through the transmitting medium of those in immediate contact with it—*MacIver* v. *Struthers* [1924] Scots L. T. (Sh. Ct. Rep.), 15.

[6] It would not be reasonable to make an order for possession under § 5 (1) (*b*) where only an isolated instance of illegality in carrying out a lawful purpose is proved. That paragraph of the section contemplates the improper user of the premises in furtherance of an unlawful design—*Waller & Son, Lim.* v. *Thomas* [1921] 1 K. B. 541; v further, note 20, *infra*.

But it is not necessary that the crime involved should be one in which the user of the premises is essential. It is sufficient if it be

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incidental to its commission—*Schneiders & Sons, Lim.* v. *Abrahams* [1925] 1 K. B. 301.

Nor is it necessary, to bring a tenant within this sub-section, that the user of the premises for an illegal purpose should be continuous or frequent.—*Ibid.*

Cf. also *Birmingham Young Men's Christian Association* v. *Gee*, unreported, but referred to in *ibid.*, [1925] 1 K. B. 305.

Thus, in *Waller's Case*, one conviction against a publican for selling beer after hours was held insufficient, and in *Schneiders' Case* one conviction against a tenant for receiving stolen property, knowing it to have been stolen, was held sufficient, to justify the making of an order for possession.

[7] Waste is either voluntary or permissive. "Voluntary waste implies the doing of some act which tends to the destruction of the premises, *e.g.*, removing fixtures. Permissive waste implies an omission whereby damage results to the premises, *e.g.*, where houses are suffered to fall into decay"—Halsbury's Laws of England, vol. 18, p. 496.

[8] Under the former Acts, the fact that the tenancy had been determined by notice to quit given by the tenant did not preclude him from retaining possession under the Act—*Hunt* v. *Bliss* [1919] 89 L. J. K. B. 174. § 5 (1) (*c*) now provides otherwise if the landlord is able to prove the facts stated therein.

The notice to quit given by the tenant need not be a formal notice: it is sufficient if it is a notice of intention on the faith of which the landlord has contracted to sell the house—*Gilbert* v. *Jordan* [1920] W. N. 309.

Where a tenancy is about to determine, an undertaking to quit on the termination is not a notice to quit within § 5 (1) (*c*)—*Barrett* v. *Marshall* [1920] 54 Ir. L. T. 214.

"Tenant" in § 5 (1) (*c*) does not include "sub-tenant." If, therefore, the original tenant has given notice to quit and the landlord brings himself within that paragraph, the sub-tenant cannot retain possession upon the ground that he has not given notice to quit—*Hylton* (*Lord*) v. *Heal* [1921] 2 K. B. 438.

[9] There must be evidence that the landlord has contracted to sell or let the house or taken some other steps as a result of which he would be seriously prejudiced if he could not obtain possession. It is not sufficient that he should intend to sell the house—*Barton and Mitchell* v. *Fincham* [1921] 2 K. B. 291.

An agreement to give up possession is ineffective. A tenant cannot by contract deprive himself of the protection of the Act—*ibid.* See, however, the limited power given by the 1923 Act, §§ 2 (2) and 3, p. 12, *supra.*

Upon an application for possession under § 5 (1) (*a*), (*b*) or (*c*), no question of alternative accommodation arises. The only relevant con-

sideration for the Court, after finding that the requisite matters have been proved by the landlord, is whether or not it is reasonable to make an order or give judgment for possession—*Waller & Son, Lim.* v. *Thomas* [1921] 1 K. B. 541.

[10] The meaning of the words "reasonably required" in sub-section (1) (*d*) was considered in *Epsom Grand Stand Association, Lim.* v. *Clarke and Wife* [1919] W. N. 170. Bankes, L.J., said, at p. 171: "The plaintiffs must satisfy the Court that the premises are reasonably required; that they are acting reasonably in requiring them."

The question whether or not premises are reasonably required is a question of fact—*Sammon* v. *Cawley* [1919] 53 Ir. L. T. 224.

By "is" reasonably required is meant "is at the date of the hearing"—*Nevile* v. *Hardy* [1921] 1 Ch. 404.

[11] "Landlord" includes "tenant," if the tenant has sub-let, in an action for possession by him against his sub-tenant—*Logan* v. *Fair* [1922] S. C. 76.

[12] The words of the 1923 Act, § 4, which have replaced the 1920 Act, § 5 (1) (*d*), provide that it shall be sufficient if the person for whom the house is required has been conditionally engaged to work in the whole time employment of the landlord. The cases of *R.* v. *Rogers* [1918] W. N. 128 and *Spencer* v. *Fox* [1922] 91 L. J. K. B. 929 are, therefore, no longer the law.

Note the words "whole time employment." These words were rendered necessary by the decision in *Wall* v. *Gibbs* [1920] W. N. 187.

The Act of 1915 had added after the words "in his employ," &c., "or on some other ground which may be deemed satisfactory by the Court making such order." Those words are now omitted. A landlord seeking to get possession for a purchaser to whom he had sold the house did not come within those words—*Stovin* v. *Fairbrass* [1919] 88 L. J. K. B. 1004. *Cf.* also *Price* v. *Pritchard* [1920] 35 T. L. R. 672, and *The Vernon Investment Association* v. *Welch* [1919] 35 T. L. R. 511. *Contra, Dumigan* v. *Kirkpatrick* [1917] 2 Scots L. T. 241; *Grandison* v. *Mackay* [1919] 1 Scots L. T. 95. This was so even where the landlord desired to sell the house for the purpose of raising funds to emigrate for the sake of his health—*Stephens* v. *Tatham* [1919] W. N. 334. In the case of *Green-Price* v. *Webb* [1919] 36 T. L. R. 29, it was held that, where the tenant has himself terminated the tenancy by notice and suggested a new tenant to the landlord, the former tenant can be ejected, for these circumstances do constitute "some other ground" within the meaning of that section. *Cf.* also *Smith* v. *Barclay* [1920] 1 Scots L. T. 13 *Cf.*, however, *Hunt* v. *Bliss* [1919] 89 L. J. K. B. 174; and *Artizans', Labourers' and General Dwellings Co., Lim.* v. *Whitaker* [1919] 2 K. B. 301. Other instances of "some other ground" within that section may be seen in *Hipps, Lim.* v. *Hughes* [1919] 53 Ir. L. T. 111; *Patterson* v. *Culhane* [1916] 50 Ir. L. T. 116.

[13] Under the former Acts it was held, in *Smith* v. *Bridgen* [1920]

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36 T. L. R. 360, that affirmative evidence of alternative accommodation was not essential, and that the Court had a discretion to make an order if, after considering all the circumstances of the case, it appeared reasonable to do so. *Cf.* also *Bazalgette* v. *Hampson* [1920] 89 L. J. K. B. 476; *MacDonald's Trustees* v. *Wares* [1917] 2 Scots L. T. 137; *M'Gilchrist* v. *Wallace* [1919] 1 Scots L. T. 309; and *Kieran* v. *Dunne* [1920] 54 Ir. L. T. 51. The wording of the present Act is, however, modified; and it is now provided that in five specified cases "the existence of alternative accommodation shall not be a condition of an order," and inferentially in cases other than those specified shall be a condition—*Nevile* v. *Hardy* [1921] 1 Ch. 404.

The onus of proving the existence of the alterative accommodation is on the plaintiff—*ibid.* and *Great Northern Rly. Co.* (*Ir.*) v. *Best* [1921] 55 Ir. L. T. 57.

Cf. also *Lamb* v. *Graham* [1919] 2 Scots L. T. 28, and *Paul and others* v. *Blench* [1919] 2 Scots L. T. 191.

By alternative accommodation is meant alternative dwelling-house accommodation, so that, if premises are used for a shop and as a dwelling-house, the landlord can recover possession subject to the Act if he shows evidence of alternative dwelling-house accommodation for his tenant, but the Court may consider the position of the alternative dwelling-house—*Wilcock* v. *Booth* [1920] 89 L. J. K. B. 864.

There is, however, an Irish case to a contrary effect—*Irvine* v. *Nelson* [1922] 56 Ir. L. T. 107.

Where a shop and dwelling-house are the subject of a single letting, it is not competent to the landlord to give an effective notice to quit in respect of the shop only—*Gates* v. *Blair* [1923] 60 Scots L. R. 261.

In considering the question of the reasonableness of the alternative accommodation the Court may have regard to the fact that the tenant's occupation is not continuous—*Cruise* v. *Terrell* [1922] 1 K. B. 664.

But the Court must have regard to the accommodation required by the tenant for persons who usually reside with him—*Fraser* v. *Midgley* [1922] Scots L. T. (Sh. Ct. Rep.) 2.

So, too, if the tenant be, *e.g.*, a doctor, the suitability of the alternative accommodation for his practice must be considered—*Cameron* v. *Wilson* [1922] Scots L. T. (Sh. Ct. Rep.) 37.

The fact that the tenant already has a second house is not necessarily evidence of alternative accommodation—*Flint* v. *Ead* [1921] 91 L. J. K. B. 132. *Cf.* also *Robertson* v. *Wilson* [1922] Scots L. T. (Sh. Ct. Rep.) 21.

Where a husband who is separated from his wife by an order of Court takes a dwelling-house for his wife and children and resides elsewhere himself, and on the expiry of the term the landlord of the dwelling-house where the wife and children are living takes proceedings against him to recover possession, accommodation for the wife and

children where the husband is residing is not "alternative accommodation," as the effect of so holding would be to cancel the separation order—*Crutchley* v. *White* [1920] 89 L. J. K. B. 815.

[14] By "is" available is meant "is at the time of the hearing"—*Kimpson* v. *Markham* [1921] 2 K. B. 157.

The Court has no power to make an order to be operative at a future date, at which there is evidence that accommodation will be available. The proper course in such a case is to adjourn the hearing to such future date, and if there is then evidence that accommodation is available, to make the necessary order—*Lees* v. *Duley* [1921] W. N. 283.

[15] The meaning of the words "in the public interest" was considered in the *City of Dublin Cancer Hospital* v. *Brownrigg* [1924] 58 Ir. L. T. 91, in which case the Court was interpreting the words of the Irish Free State Increase of Rent and Mortgage Interest (Restrictions) Act, 1923 (No. 19 of 1923), § 17.

[16] Despite this section, a local authority desiring to acquire land for the purposes of an improvement scheme under the Housing, Town Planning, &c., Acts, need not prove the existence of alternative accommodation—*Parry* v. *Harding* [1925] 1 K. B. 111.

By the Housing, Town Planning, &c., Act, 1919 (9 & 10 Geo. 5. c. 35), § 35, as amended by the Housing, &c., Act, 1923 (13 & 14 Geo. 5. c. 24), § 16 and Sch. II., "Nothing in the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, or in the enactments amending that Act, shall be deemed to affect the provisions of section seventeen of the Housing, Town Planning, &c., Act, 1909, or to prevent a local authority from obtaining possession of any house the possession of which is required by them for the purpose of exercising their powers under the Housing Acts or under any scheme made under those Acts."

[17] The widow of an ex-service man cannot claim the advantage of § 5 (1) (*f*)—*Squier* v. *Hore* [1921] 38 T. L. R. 38.

If a father who is the owner of a dwelling-house conveys it to his son, who is an ex-service man, the son may take advantage of the provisions of § 5 (1) (*f*). If the son did not *bona fide* require the house for his own occupation, but was really acting for his father, the matter might be different—*Stanley Kentish* v. *Sneath* [1921] 65 S. J. 455.

[18] In determining whether accommodation is "reasonably sufficient," the Court should have regard to the occupation of the tenant. An offer to a tenant, who takes lodgers, of accommodation, which does not provide for the lodgers, is not reasonably sufficient, if the tenant in fact largely maintains herself by keeping a lodging house—*Chiverton* v. *Ede* [1921] 2 K. B. 30.

[19] If a wife owns a dwelling-house and lets it to her husband, and upon her husband entering military service lets it to a new tenant, the wife can now claim possession under § 5 (1) (*g*) if she satisfies the Court that there really was a tenancy existing between her and her

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husband before the commencement of his military service—*Messenger* v. *Hutton* [1921] 91 L. J. K. B. 626.

[20] It is to be noted that the words "the Court considers it reasonable to make such an order" govern the whole nine grounds upon which possession may be obtained, and the county court judge is thereby given a discretion which he did not enjoy under the former Acts—*Benabo* v. *Horseley* [1920] 36 T. L. R. 859.

In exercising that discretion he must take into consideration every circumstance that might affect the interests of the landlord or of the tenant in the premises, including the financial hardship which may be inflicted upon the tenant if an order for possession is made—*Williamson* v. *Pallant* [1924] 2 K. B. 173.

Cf. also *Shrimpton* v. *Rabbits* [1924] 68 S. J. 685.

Where a tenant has committed a breach of covenant and been induced thereto by the conduct of the landlord's agent, it is not reasonable to make an order for possession—*Upjohn* v. *Macfarlane* [1922] 2 Ch. 256. Upon appeal, however, the order of the Court was discharged by consent. —*Ibid.*

[21] Where a dwelling-house is let to an employee by an agreement in writing, which contains a provision that the tenancy is to terminate when the employee ceases to be in the landlord's employ, and after the termination of such employment the tenant is permitted to retain possession, the landlord cannot avail himself of the provisions of § 5 (1) (*i*), for it cannot be said that the house was let to the tenant in consequence of his employment. After the termination of the first tenancy, a new implied tenancy was created—*Great Northern Rly. Co.* (*Ir.*) v. *Best* [1921] 55 Ir. L. T. 57.

But where the service has ceased since the house in question came within the protection of the Increase of Rent, &c. Acts, no such new tenancy is created by the tenant retaining possession—*Lever Bros., Lim.* v. *Caton* [1921] W. N. 190.

This, it is submitted, is the true ground upon which these two cases may be reconciled, though the judges in the latter case are reported as deciding that the paragraph must be construed as referring to the original letting of the house.

[22] Where a landlord claims possession under § 5 (1) (*d*) and (ii) and a certificate as therein required is produced by him, the county court judge must act upon the certificate. He cannot ignore it and try the question as one of fact for his own decision. The sub-section means that the way in which the Court is to be satisfied is by the production of the certificate, and, when produced, it ought to be acted upon—*Smith* v. *Primavesi* [1921] W. N. 291; *Aikman* v. *Jackson* [1923] Scots L. T. (Sh. Ct. Rep.) 125.

On any application to a county agricultural committee for a certificate

for the purpose of paragraph (ii) of sub-section (1) of section five of the principal Act, a fee shall be payable by the applicant to the county agricultural committee of such amount as the Minister of Agriculture and Fisheries shall by regulation determine. [1923 Act, § 18 (2).] As to the fee payable, see S. R. & O. 1924, No. 168, dated February 19, 1924, v. p. 183, *infra*.

An instrument purporting to be a certificate of a county agricultural committee and to be signed by an officer of the committee shall, without further proof, be taken to be a certificate of the committee unless the contrary is proved. [1923 Act, § 18 (3).]

23 The meaning of the words "greater hardship" in § 5 (1) will be found considered in a number of Scots and Irish cases. *Cf. e.g.*, *Dowling* v. *Butler* [1920] 54 Ir. L. T. 199; *Barrett* v. *Marshall* [1920] 54 Ir. L. T. 214; *Menzies* v. *Rankine* [1922] Scots L. T. (Sh. Ct. Rep.) 13; *Falkirk and District United Co-operative Society, Lim.* v. *Potter* [1922] Scots L. T. (Sh. Ct. Rep.) 33; and *Christie* v. *Briginshaw* [1922] Scots L. T. (Sh. Ct. Rep.) 111.

Where a landlord is himself a lessee, and the tenant would as occupier become entitled to the renewal of the landlord's head lease, if he were allowed to remain in occupation until the date of the determination of the head lease, it would be a "greater hardship" to refuse, than to grant, to the landlord an order for possession—*McQuillan* v. *Clinton* [1921] 55 Ir. L. T. 143.

For the purpose of applying the provisions of this section the time to be considered is the time of the hearing of the proceedings for recovery of possession—*Harcourt* v. *Lowe* [1919] 35 T. L. R. 244. *Cf.* also *Nevile* v *Hardy* [1921] 1 Ch. 404, and *Kimpson* v. *Markham* [1921] 2 K. B. 157.

The Court will not stay proceedings pending the passing of an Act which will probably give protection to the tenant; for the judiciary administers the law as it is—*Stringer* v. *Donovan* [1920] 54 Ir. L. T. 139.

[**1923 Act, § 4.**]—"(2)* At the time of the application for or the making or giving of any order or judgment for the recovery of possession of any such dwelling-house, or for the ejectment of a tenant therefrom, or in the case of any such order or judgment which has been made or given, whether before or after the passing of this Act, and not executed at any subsequent time, the court may adjourn the application, or stay or suspend execution on any such order or judgment, or postpone the date of possession, for such period or periods as it

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* This re-enacts *verbatim* the 1920 Act, § 5 (2).

Restriction on Right to Possession—*continued.*

thinks fit, and subject to such conditions (if any) in regard to payment by the tenant of arrears of rent, rent, or mesne profits and otherwise as the court thinks fit, and, if such conditions are complied with, the court may, if it thinks fit, discharge or rescind any such order or judgment."

Cf. 1915 Act, § 1 (3), and 1919 (No. 2) Act, § 1 (2).

For definition of "tenant," v. § 12 (1) (*f*) and (*g*).

"The passing of this Act," *i.e.*, July 2, 1920.

For form of notice of application under this sub-section, v. Appendix III., Form 9.

For form of order, v. Appendix III., Form 10.

Even where the date of possession has been fixed by consent, the judge may entertain an application for further time for giving up possession under this sub-section—*Rossiter* v. *Langley* [1925] W. N. 56.

Cf., however, *Wellesley* v. *White* [1921] 2 K. B. 204, a case decided under sub-section (3) to a contrary effect.

It is not a judicial exercise of discretion to stay execution indefinitely and the Court cannot do so. *Kelly* v. *White* and *Penn-Gaskell* v. *Roberts*, both reported in [1920] W. N. 220.

[**1923 Act, § 4.**]—"(3)* Where any order or judgment has been made or given before the passing of this Act, but not executed, and, in the opinion of the court, the order or judgment would not have been made or given if this Act had been in force at the time when such order or judgment was made or given, the court may, on application by the tenant, rescind or vary such order or judgment in such manner as the court may think fit for the purpose of giving effect to this Act."

Cf. 1915 Act, § 1 (3), and 1919 (No. 2) Act, § 1 (3).

For definition of "tenant," v. § 12 (1) (*f*) and (*g*).

"The passing of this Act," *i.e.*, July 2, 1920.

For form of notice of application under this sub-section, v. Appendix III., Form 9.

For form of order, v. Appendix, III., Form 10.

A county court judge upon an application under this sub-section is not bound to rescind or vary the order already made, even though he is of opinion that the order would not have been made if the present Act had been in force at the time when it was made—*Taylor* v. *Faires* [1920] 90 L. J. K. B. 391.

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* This re-enacts *verbatim* the 1920 Act, § 5 (3).

An illustration of a case where the order was rescinded may be seen in *Comyn* v. *Leask* [1921] 55 Ir. L. T. 13.

A defendant who has consented to an order for possession being made against him cannot apply under this sub-section for its rescission or variation. This sub-section applies only to orders made *in invitum*—*Wellesley* v. *White* [1921] 2 K. B. 204.

Cf., however, *Rossiter* v. *Langley* [1925] W. N. 56, a case decided under sub-section (2) to a contrary effect.

A provision similar to the above sub-section is enacted by the 1924 Act, § 2 (1). This would be brought into operation in cases which came within the 1920 Act, § 5 (1) (iv) and (v), as re-enacted by the 1923 Act, § 4, but do not come within the 1924 Act, § 1 (which repealed those paragraphs). And it is further provided by the 1924 Act, § 2 (2), that "where a landlord has, on or after the fifteenth day of April, nineteen hundred and twenty-four, taken possession of a dwelling-house under a judgment or order so rescinded as aforesaid, such possession shall not in any case exclude the dwelling-house from the operation of the Rent and Mortgage Interest (Restrictions) Acts, 1920 and 1923."

It is a little difficult to appreciate when the 1924 Act, § 2 (2), would operate, since § 2 (1) is limited to cases where the judgment has *not* been executed.

[**1923 Act, § 4.**]—"(4)* Notwithstanding anything in section one hundred and forty-three of the County Courts Act, 1888, or in section one of the Small Tenements Recovery Act, 1838, every warrant for delivery of possession of, or to enter and give possession of, any dwelling-house to which this Act applies, shall remain in force for three months from the day next after the last day named in the judgment or order for delivery of possession or ejectment, or, in the case of a warrant under the Small Tenements Recovery Act, 1838, from the date of the issue of the warrant, and in either case for such further period or periods, if any, as the court shall from time to time, whether before or after the expiration of such three months, direct."

Cf. 1919 (No. 2) Act, § 1 (4).

For dwelling-houses to which this Act applies, v. § 12 (2) and (9).

The County Courts Act, 1888 (51 & 52 Vict. c. 43), § 143, enacts that every warrant to a bailiff to give possession of a tenement shall "on whatever day it may be issued, bear date on the day next after the last day named by the judge in his order for the delivery of possession of the premises in question, and shall continue in force from

* This re-enacts *verbatim* the 1920 Act, § 5 (4).

Restriction on Right to Possession—*continued.*

three months from such date and no longer, but no order for delivery of possession need be drawn up or served."

The Small Tenements Recovery Act, 1838 (1 & 2 Vict. c. 74), § 1, enacts that, where a tenant of premises held by him at will or for a term not exceeding seven years, whose lease has determined, where there is no rent, or where the rent does not exceed £20 a year, refuses to give up possession, the landlord may give him notice of his intention to proceed to recover possession. If the tenant does not appear, or fails to show cause why he should not give possession, the justices may issue their warrant directing the constable to give the landlord possession.

[**1923 Act, § 4.**]—"(5) * An order or judgment against a tenant for the recovery of possession of any dwelling-house or ejectment therefrom under this section shall not affect the right of any sub-tenant to whom the premises or any part thereof have been lawfully sub-let before proceedings for recovery of possession or ejectment were commenced, to retain possession under this section, or be in any way operative against any such sub-tenant.

This sub-section was newly introduced by the 1920 Act.

If a landlord is able to obtain possession as against a tenant on the ground of breach of covenant, even though he does so by means of forfeiture during the term of the contractual tenancy, the sub-tenants, to whom the house was lawfully sub-let before the proceedings against the tenant commenced, may retain possession—*Ward* v. *Larkins* [1923] W. N. 189.

Cf., however, the view of the meaning of this sub-section expressed by Rowlatt, J., in *Hylton (Lord)* v. *Heal* [1921] 2 K. B., at p. 449.

Note the words "for the recovery of possession of any dwelling-house *under this section.*" A similar protection for sub-tenants when the dwelling-house, in which they are sub-tenants, is not within the Act, is provided by *Cottell* v. *Baker and Others* [1920] 36 T. L. R. 208.

The first defendant in that case was the occupier of a shop, to which the Act did not apply. He had sub-let a number of rooms to different tenants at small weekly sums, so that they came within the protection of the Act. *Held*, that an order for possession must be made against him, but not against them.

On the other hand, where a tenant, by reason of his breach of covenant not to under-let without the lessor's consent, is disentitled to the protection of the Act, the under-tenant to whom the premises have

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* This re-enacts *verbatim* the 1920 Act, § 5 (5).

been let in breach of the covenant is also disentitled to the protection of the Act—*Dick and Another* v. *Jacques and Another* [1920] 36 T. L. R. 773.

So, too, where a tenant of a flat sub-lets in breach of covenant, and his tenancy is subsequently terminated by consent, the landlord can recover possession against the sub-tenant upon proof of the breach of covenant by the tenant—*Chapman* v. *Hughes* [1923] 39 T. L. R. 260.

It is material to note in this connection that it is no breach of a covenant not to under-let without consent to under-let part only of the demised premises—*Wilson* v. *Rosenthal* [1906] 22 T. L. R. 233.

[**1923 Act, § 4.**]—"(6)* Where a landlord has obtained an order or judgment for possession or ejectment under this section on the ground that he requires a dwelling-house for his own occupation, and it is subsequently made to appear to the court that the order or judgment was obtained by misrepresentation or the concealment of material facts, the court may order the landlord to pay to the former tenant such sum as appears sufficient as compensation for damage or loss sustained by that tenant as the result of the order or judgment."

This sub-section was newly introduced by the 1920 Act.

For definition of "landlord" and "tenant," v. § 12 (1) (*f*) and (*g*).

For form of summons for order under this sub-section, v. Appendix III., Form 15.

For form of order under this sub-section, v. Appendix III., Form 16.

The words "or judgment" where they occur after the word "order" where that word is used for the second time, were added by the 1923 Act, § 4.

[**1923 Act, § 4.**]—"(7) The provisions of the last preceding sub-section shall apply in any case where the landlord has, after the thirty-first day of July, nineteen hundred and twenty-three, obtained an order or judgment for possession or ejectment on any of the grounds specified in paragraph (*d*) of sub-section (1) of this section, and it is subsequently made to appear to the court that the order or judgment was obtained by misrepresentation or concealment of material facts, and in any such case the court may, if it thinks fit, in addition to making an order for payment of compensation by the landlord to the former tenant, direct that the dwelling-house shall not be excluded from this Act by reason of the landlord having

* This re-enacts with one verbal alteration the 1920 Act, § 5 (6).

Restriction on Right to Possession—*continued.*

come into possession thereof under the said order or judgment, and if such a direction is given, this Act shall apply and be deemed to have applied to the dwelling-house as from the date mentioned in such direction."

This sub-section was newly introduced by the 1923 Act.

"The last preceding sub-section," *i.e.*, 1920 Act, § 5 (6), re-enacted by the 1923 Act, § 4.

"Paragraph (*d*) of sub-section (1) of this section," *i.e.*, 1920 Act, § 5 (1) (*d*), amended and re-enacted by the 1923 Act, § 4.

For definition of "landlord" and "tenant" v. § 12 (1) (*f*) and (*g*).

For decontrol of houses becoming vacant, v. 1923 Act, § 2 (1), reproduced at p. 66, *infra*.

Cf. also a similar provision in the 1924 Act, § 2 (2), set out at p. 49, *supra*.

RESTRICTION ON LEVY OF DISTRESS FOR RENT.

[**1920 Act, § 6.**]—6. No distress for the rent of any dwelling-house to which this Act applies shall be levied except with the leave of the county court, and the court shall, with respect to any application for such leave, have the same or similar powers with respect to adjournment, stay, suspension, postponement and otherwise as are conferred by the last preceding section of this Act in relation to applications for the recovery of possession:

Provided that this section shall not apply to distress levied under section one hundred and sixty of the County Courts Act, 1888.

The provisions of this section shall be in addition to and not in derogation of any of the provisions of the Courts (Emergency Powers) Act, 1914, or any Act amending or extending the same, except so far as those provisions are repealed by this Act.

This section was newly introduced by the 1920 Act.

For dwelling-houses to which this Act applies, v. § 12 (2) and (9).

The 1920 Act repealed the Courts (Emergency Powers) Act, 1917, §§ 4, 5, and 7.

The Courts Emergency Powers Acts, so far as they relate to landlords and tenants, have now expired.

For form of summons for leave to distrain, v. Appendix III., Form 13.

For form of order for leave to distrain, v. Appendix III., Form 14.

Upon an application by a landlord under this section a tenant is entitled to show, if he can, that there is a reasonable and *bona fide* dispute as to the amount of rent due, and if he shows that, the county court judge should refuse leave to distrain, until the amount be settled —*Townsend* v. *Charlton* [1922] 1 K. B. 700.

The County Courts Act, 1888 (51 & 52 Vict. c. 43), § 160, enacts that 8 Anne, c. 14, § 1, "shall not apply to goods taken in execution under the warrant of the Court, but the landlord of any tenement in which any such goods shall be so taken may claim the rent thereof at any time within five clear days from the date of such taking, or before the removal of the goods, by delivering to the bailiff or officer making the levy any writing signed by himself or his agent, which shall state the amount of rent claimed to be in arrear, and the time for and in respect of which such rent is due; and if such claim be made, the bailiff or officer making the levy shall, in addition thereto, distrain for the rent so claimed and the costs of such distress." Then follow provisions as to the sale of the goods.

8 Anne, c. 14, § 1, provides that "no goods or chattels whatsoever, lying or being in or upon any messuage, lands or tenements, which are or shall be leased for life or lives, term of years, at will or otherwise, shall be liable to be taken by virtue of any execution on any pretence whatsoever, unless the party at whose suit the said execution is sued out, shall before the removal of such goods from off the said premises, by virtue of such execution or extent, pay to the landlord of the said premises or his bailiff, all such sum or sums of money as are or shall be due for rent for the said premises at the time of the taking such goods or chattels by virtue of such execution; provided the said arrears of rent do not amount to more than one year's [limited to six months' by Bankruptcy Act, 1914 [4 & 5 Geo. 5, c. 59], § 35 (2)] rent; and in case the said arrears shall exceed one year's rent, then the said party, at whose suit such execution is sued out, paying the said landlord or his bailiff, one year's rent, may proceed to execute his judgment, as he might have done before the making of this Act; and the sheriff or other officer is hereby empowered and required to levy and pay to the plaintiff as well the money so paid for rent, as the execution money."

RESTRICTION ON CALLING IN OF MORTGAGES.

[**1920 Act, § 7.**]—7. It shall not be lawful for any mortgagee under a mortgage to which this Act applies, so long as—

(*a*) interest at the rate permitted under this Act [1] is paid and is not more than twenty-one days in arrear; [2] and

(*b*) the covenants by the mortgagor (other than the covenant for the repayment of the principal money secured) are performed and observed; and

Restriction on Calling in of Mortgages—*continued.*

(*c*) the mortgagor keeps the property in a proper state of repair [3] and pays all interest and instalments of principal recoverable under any prior encumbrance,

to call in his mortgage [4] or to take any steps for exercising [5] any right of foreclosure or sale, or for otherwise enforcing his security or for recovering the principal money thereby secured:

Provided that—

(i) this provision shall not apply to a mortgage where the principal money secured thereby is repayable by means of periodical instalments extending over a term of not less than ten years from the creation of the mortgage, nor shall [6] this provision affect any power of sale exerciseable by a mortgagee who was on the twenty-fifth day of March nineteen hundred and twenty a mortgagee in possession,[7] or in cases where the mortgagor consents to the exercise by the mortgagee of the powers conferred by the mortgage;[8] and

(ii) if, in the case of a mortgage of a leasehold interest the mortgagee satisfies the county court that his security is seriously diminishing in value or is otherwise in jeopardy, and that for that reason it is reasonable that the mortgage should be called in and enforced, the court may by order authorise him to call in and enforce the same, and thereupon this section shall not apply to such mortgage; but, any such order may be made subject to a condition that it shall not take effect if the mortgagor within such time as the court directs pays to the mortgagee such portion of the principal sum secured as appears to the court to correspond to the diminution of the security.

Cf. 1915 Act, § 1 (4); 1919 Act, § 4 (ii) and (iv).

For definition of "mortgagee," v. § 12 (1) (*f*); "mortgage," v. § 12 (1) (*h*); "mortgagor," v. § 12 (1) (*f*).

For mortgages to which this Act applies, v. § 12 (4).

For permitted increases in rate of mortgage interest, v. § 4.

For form of summons for order authorising mortgagee to call in and enforce his mortgage, v. Appendix III., Form 2.

For form of order on such an application, v. Appendix III., Form 4.

It was held that upon an application by a mortgagee under the Courts (Emergency Powers) Act, 1914, for leave to exercise his power of sale, it was desirable and right that second incumbrancers should be represented before, and heard by, the Court—*In re Hill's Application* [1919] 88 L. J. Ch. 136.

[1] No order for foreclosure will be made in favour of a mortgagee if the mortgagor, *inter alia*, pays interest "at the rate permitted under this Act." Where, therefore, interest was increased to an amount in excess of that permitted under the 1920 Act, the mortgagee taking advantage of § 1 (1) (v) of the 1915 Act, the mortgagee cannot recover that interest in so far as it is so in excess as from July 2, 1920, and no order for foreclosure will be made for the non-payment of such excess—*Hollands* v. *Cooper* [1921] 91 L. J. Ch. 297; and see p. 34, *supra*.

[2] If interest is more than twenty-one days in arrear at the date of the issue of the writ, it is immaterial that the mortgagor after that date pays such interest. Despite such payment, the mortgagee may enforce his security—*Evans* v. *Horner* [1925] 1 Ch. 177.

[3] The question whether the mortgaged property is in "a proper state of repair" must be measured by the general condition of the property at the date of the mortgage, and does not necessarily mean "in good and tenantable repair"—*Woodifield* v. *Bond* (*No.* 2) [1922] 2 Ch. 40.

If the mortgage was made before the Increase of Rent, &c., Acts applied to the property in question, the propriety of the state of repair is to be measured by the general condition of the property when the Acts first so applied—*Hutchinson's Trustees* v. *Downie's Trustees* [1923] Scots L. T. 49.

[4] In the case of the *London County and Westminster Bank* v. *Tompkins* [1918] 1 K. B. 515, the defendant, by a deed dated December 14, 1912, declared that he had deposited deeds, &c., mentioned in a schedule, as security for a present or future overdraft. *Held*, on the particular facts of that case, that the deed was not a "mortgage" within § 1 (4) of the 1915 Act, but was an equitable charge within § 2 (4) (*b*). *Cf.* § 12 (4) of the 1920 Act. *Cf.* also *Jones* v. *Woodward* [1917] 116 L. T. 378.

[5] In the case of *Welby* v. *Parker* [1916] 2 Ch. 1, the Court of Appeal, affirming the judgment of Eve, J., held that a mortgagee, under a mortgage to which the 1915 Act applied, who had issued a writ to enforce his security by foreclosure or sale before the Act came into operation, was, by applying by summons in chambers for an order *nisi*, taking a step for exercising his right of foreclosure, and could not proceed, inasmuch as the Act took away no rights, but only related to procedure and was therefore retrospective.

The meaning of the words "take any steps for enforcing his security"

Restriction on Calling in of Mortgages—*continued.*

was further considered in *Martin* v. *Watson & Egan* [1919] 2 I. R. 332. The interest of the mortgagee of a leasehold house became vested in the plaintiff. The mortgagor assigned his interest to A, who let the house to B, which lease was void as against the mortgagee. The plaintiff brought an action of ejectment against the mortgagor, A, and B. *Held*, that the plaintiff had taken a step for enforcing his security.

[6] The words "nor shall," etc., in § 7 (i) may be found considered by Sargant, J., in *Walters* v. *White* [1917] 33 T. L. R. 154. He there held that these words do not mean that in every case where a mortgagee is in possession his remedies are now limited to the exercising of his power of sale, but are inserted only *ex abundanti cautela.*

[7] "A mortgagee in possession" has been held to mean, under § 1 (1) (*b*) of the Courts (Emergency Powers) Act, 1914, a mortgagee who has taken possession without leave of the Court—*In re Provident Association of London, Lim. and Gallogaly's Contract* [1917] 1 Ir. R. 240—and by parity of reasoning that may be taken to be the meaning in the present Act. *Cf.* also Courts (Emergency Powers) (No. 2) Act, 1916, § 1 (1) (*c*), which defined "mortgagee in possession."

Where a mortgagee, who was appointed receiver before the Courts (Emergency Powers) Act, 1914, came into force, died and a new receiver was appointed, the new receiver was held to be entitled to act without the leave of the Court, for the office of receiver is continuous and not individual, and the receiver was a mortgagee in possession at the passing of the Courts (Emergency Powers) Act—*In re Hill, Lim. and Simmon's Contract* [1920] W. N. 386.

[8] Effect must be given to the words "provided that this provision shall not apply . . . in cases where the mortgagor consents to the exercise by the mortgagee of the powers conferred by the mortgage" even when a third party is thereby prejudiced—*Graham's Trustees* v. *Dow's Trustees* [1917] 2 Scots L. T. 154.

RESTRICTION ON PREMIUMS.

[**1920 Act, § 8.**]—8. (1) A person shall not, as a condition of the grant, renewal, or continuance of a tenancy or sub-tenancy of any dwelling-house to which this Act applies, require the payment of any fine, premium, or other like sum, or the giving of any pecuniary consideration, in addition to the rent, and, where any such payment or consideration has been made or given in respect of any such dwelling-house under an agreement made after the twenty-fifth day of March nineteen hundred and twenty, the amount or value thereof shall be recoverable by the person by whom it was made or given:

Provided that, where any agreement has been made since the said date but before the passing of this Act for the tenancy of a house to which this Act applies, but the enactments repealed by this Act did not apply, and the agreement includes provision for the payment of any fine, premium, or other like sum, or the giving of any pecuniary consideration in addition to the rent, that agreement shall, without prejudice to the operation of this section, be voidable at the option of either party thereto.

(2) A person requiring any payment or the giving of any consideration in contravention of this section shall be liable on summary conviction to a fine not exceeding one hundred pounds, and the court by which he is convicted may order the amount paid or the value of the consideration to be repaid to the person by whom the same was made or given, but such order shall be in lieu of any other method of recovery prescribed by this Act.

(3) This section shall not apply to the grant, renewal or continuance for a term of fourteen years or upwards of any tenancy.

[**1923 Act, § 9 (1).**]—9. *Excessive charges for furniture, &c., taken over in connexion with tenancies.*—(1) Where the purchase of any furniture or other articles is required as a condition of the grant, renewal, or continuance of a tenancy or sub-tenancy of a dwelling-house to which the principal Act applies, the price demanded shall, at the request of the person on whom the demand is made, be stated in writing, and, if the price exceeds the reasonable price of the articles, the excess shall be treated as if it were a fine or premium required to be paid as a condition of the grant, renewal, or continuance, and the provisions of section eight of the principle Act, including penal provisions, shall apply accordingly.

Cf. 1915 Act, § 1 (2); Courts (Emergency Powers) (No. 2) Act, 1916, § 2 (1); Courts (Emergency Powers) Act, 1917, § 4; and 1919 Act, § 4 (ii).

For dwelling-houses to which this Act applies, v. § 12 (2) and (9).

For dwelling-houses to which the enactments repealed by this Act applied, v. p. 20, *supra*.

"The passing of this Act," *i.e.*, July 2, 1920.

Restriction on Premiums—*continued.*

For other criminal responsibility of landlords, v. §§ 3 (2), 10, 11, 14 (2), and 1923 (Notices of Increase) Act, § 2 (2).

For criminal responsibility of tenants, v. § 15 (2), and 1923 Act, § 7 (2).

This section only forbids the requiring of a premium or other like sum "as a condition of the grant, renewal, or continuance of a tenancy or sub-tenancy." These words do not include the assignment of the unexpired portion of a lease—*Mason, Herring and Brooks* v. *Harris* [1921] 1 K. B. 653.

So, too, this section only forbids the requiring of a premium or other like sum by a person capable of granting, renewing or continuing the tenancy concerned—*Remmington* v. *Larchin* [1921] 3 K. B. 404.

The section is a penal one, and, where reasonably capable of two constructions, should be given the most lenient one, that is to say, that one which avoids the imposition of a penalty.—*Ibid.*

A premium or fine exacted by a landlord from his tenant in return for his consent to the tenant's sub-letting to a sub-tenant is not prohibited by this section—*Strathern* v. *Beaton* [1923] S. C. (J.) 59.

But it is prohibited in England in most cases by the Conveyancing, &c., Act, 1892 (55 & 56 Vict. c. 13), § 3. That Act does not apply to Scotland.—*Ibid*, § 1 (2).

Rees v. *Marquis of Bute* and *Davies* v. *The Same* [1916] 2 Ch. 64 were decided under the 1915 Act. It was held in those cases that, notwithstanding that the term to be granted was ninety-nine years, the leases would create tenancies within the Act, and premiums paid for the granting of such leases were prohibited from being retained by the landlord.

By the Courts (Emergency Powers) Act, 1917, § 4 (1), the 1915 Act, § 1 (2) was declared not to apply to a lease of a dwelling-house for a term of twenty-one years or upwards.

Both these sections are repealed by the present Act, and, by § 8 (3), § 8 "shall not apply to the grant, renewal or continuance for a term of fourteen years or upwards of any tenancy."

The cases above quoted further decided that, the agreement to pay the premiums being illegal, and no possession having been taken under the contracts, the defendant was entitled to be relieved altogether from the contracts upon repaying to the plaintiffs all moneys he had received from them.

This part of those cases remains as an authority.

Payments made by mistake of law by a tenant of increased rent, which the landlord could not have recovered by reason of the Act, are not "a fine, premium, or other like sum" within the section—*Sharp Brothers & Knight* v. *Chant* [1917] 1 K. B. 771. The force of this case is, however, taken away by the express provisions of § 14 (1) q.v.

LIMITATIONS ON RENT OF HOUSES LET FURNISHED.

[**1920 Act, § 9.**]—9. (1) Where any person lets, or has, before the passing of this Act, let any dwelling-house to which this Act applies, or any part thereof, at a rent which includes payment in respect of the use of furniture, and it is proved to the satisfaction of the county court on the application of the tenant [1] that the rent charged is yielding or will yield to the landlord [2] a profit more than twenty-five per cent. in excess of the normal profit as hereinafter defined, the court may order that the rent, so far as it exceeds such sum as would yield such normal profit and twenty-five per cent. shall be irrecoverable, and that the amount of any payment of rent in excess [3] of such sum which may have been made in respect of any period after the passing of this Act, shall be repaid to the tenant.[1]

(2) For the purpose of this section, "normal profit," [4] means the profit which might reasonably have been expected from a similar letting in the year ending on the third day of August nineteen hundred and fourteen.

Cf. 1919 Act, § 6.

For definition of "let," v. § 12 (1) (*g*).

"Before the passing of this Act," *i.e.*, July 2, 1920.

For dwelling-houses to which this Act applies, v. § 12 (2) and (9).

For form of summons under this section, v. Appendix III., Form 11; and for form of order, v. Form 12.

Note the distinction between "normal profit" and "standard rent" [v. § 12 (1) (*a*)]. "Normal profit" is "the profit which might reasonably have been expected from a similar letting in the year ending," and "standard rent" is "the rent at which the dwelling-house was let" on, August 3, 1914.

[1] The word "tenant" has been substituted for "lessee," v. 1923 Act, § 10 (2).

[2] The word "landlord" has been substituted for "lessor," v. 1923 Act, § 10 (2).

[3] Note that the excess mentioned in this section, if paid by the lessee, may be ordered by the county court to be repaid to him. Such an express statutory provision is rendered necessary by the decision in *Sharp Brothers & Knight* v. *Chant* [1917] 1 K. B. 771, the facts of which case will be found set out at p. 81, *infra*.

[4] Observations upon calculating the "normal profit" will be found in *Langdon* v. *Elliott* [1924] Scots L. T. (Sh. Ct. Rep.) 9.

PENALTY FOR EXCESSIVE CHARGES FOR FURNISHED LETTINGS.

[**1920 Act, § 10.**]—10. Where any person after the passing of this Act lets any dwelling-house to which this Act applies or any part thereof at a rent which includes payment in respect of the use of furniture, and the rent charged yields to the landlord [2] a profit which, having regard to all the circumstances of the case, and in particular to the margin of profit allowed under the last preceding section of this Act, is extortionate, then, without prejudice to any other remedy under this Act, the landlord [2] shall be liable on summary conviction to a fine not exceeding one hundred pounds, and the court by which he is convicted may order that the rent so far as it exceeds the amount permitted by the last preceding section of this Act shall be irrecoverable and that the amount of any such excess shall be repaid to the tenant,[1] but any such order shall be in lieu of any other method of recovery prescribed by this Act.

This section was newly introduced by the 1920 Act.

For definition of "let," v. § 12 (1) (*g*).

"Passing of this Act," *i.e.*, July 2, 1920.

For dwelling-houses to which this Act applies, v. § 12 (2) and (9).

For other methods of recovery, v. § 14 (1).

For other criminal responsibility of landlords, v. §§ 3 (2), 8 (2), 11, 14 (2), and 1923 (Notices of Increase) Act, § 2 (2).

For criminal responsibility of tenants, v. § 15 (2), and 1923 Act, § 7 (2).

[1] The word "tenant" has been substituted for "lessee," v. 1923 Act, § 10 (2).

[2] The word "landlord" has been substituted for "lessor," v. 1923 Act, § 10 (2).

STATEMENT TO BE SUPPLIED AS TO STANDARD RENT.

[**1920 Act, § 11.**]—11. A landlord of any dwelling-house to which this Act applies shall, on being so requested in writing by the tenant of the dwelling-house, supply him with a statement in writing as to what is the standard rent of the dwelling-house, and if, without reasonable excuse, he fails within fourteen days to do so, or supplies a statement which

is false in any material particular, he shall be liable on summary conviction to a fine not exceeding ten pounds.

Cf. 1919 Act, § 5 (1).

For definition of "landlord" and "tenant," v. § 12 (1) (*f*) and (*g*); "standard rent," v. § 12 (1) (*a*).

For dwelling-houses to which this Act applies, v. § 12 (2) and (9).

For other criminal responsibility of landlords, v. §§ 3 (2), 8 (2), 10, 14 (2), and 1923 (Notices of Increase) Act, § 2 (2).

For criminal responsibility of tenants, v. § (15) (2), and 1923 Act, § 7 (2).

APPLICATION AND INTERPRETATION OF ACT.

[**1920 Act, § 12 (1).**]—12. (1) For the purposes of this Act, except where the context otherwise requires:—

(*a*) The expression "standard rent" [1] means the rent at which the dwelling-house was let [2] on the third day of August nineteen hundred and fourteen, or, where the dwelling-house was not let [3] on that date, the rent at which it was last let before that date, or, in case of a dwelling-house which was first let [4] after the said third day of August, the rent at which it was first let:

Provided that, in the case of any dwelling-house let at a progressive rent [5] payable under a tenancy agreement or lease, the maximum rent payable under such tenancy agreement or lease shall be the standard rent; and, where at the date by reference to which the standard rent is calculated, the rent was less than the rateable value the rateable value at that date shall be the standard rent;

(*b*) The expression "standard rate of interest" means, in the case of a mortgage in force on the third day of August nineteen hundred and fourteen, the rate of interest payable at that date, or, in the case of a mortgage created since that date, the original rate of interest;

(*c*) The expression "net rent" [6] means, where the landlord at the time by reference to which the standard rent is calculated paid the rates chargeable on, or

Application and Interpretation of Act—*continued.*

which but for the provisions of any Act would be chargeable on the occupier, the standard rent less the amount of such rates, and in any other case the standard rent;

(*d*) The expression "rates" includes water rents and charges, and any increase in rates payable by a landlord shall be deemed to be payable by him until the rate is next demanded;

(*e*) The expression "rateable value" [7] means the rateable value on the third day of August nineteen hundred and fourteen, or, in the case of a dwelling-house or a part of dwelling-house first assessed after that date, the rateable value at which it was first assessed;

(*f*) The expressions "landlord," "tenant," [8] "mortgagee," and "mortgagor" include any person from time to time deriving title [9] under the original landlord, tenant, mortgagee, or mortgagor;

(*g*) The expression "landlord" also includes in relation to any dwelling-house any person, other than the tenant, who is or would but for this Act be entitled to possession of the dwelling-house, and the expressions "tenant and tenancy" include sub-tenant and sub-tenancy, and the expression "let" includes sub-let; and the expression "tenant" includes the widow of a tenant dying intestate who was residing with him at the time of his death, or, where a tenant dying intestate leaves no widow or is a woman, such member of the tenant's family [10] so residing as aforesaid as may be decided in default of agreement by the county court;

(*h*) The expression "mortgage" includes a land charge under the Land Transfer Acts, 1875 and 1897;

(*i*) The expressions "statutory undertaking" and "statutory duties or powers" include any undertaking, duties or powers, established, imposed or exercised under any order having the force of an Act of Parliament.

Cf. 1915 Act, §§ 1 (1) (iv) and 2 (1); 1919 Act, §§ 4 (v) and 7.

For method of apportionment of standard rent or rateable value, v. § 12 (3).

§ 12 (1) (*d*) does not apply to Scotland, v. § 18 (1) (*c*).

[1] The meaning of the words "standard rent" has further been elucidated in the case of *The Westminster and General Properties and Investment Co., Lim. and Another* v. *Simmons* [1919] W. N. 241. The defendant was a tenant of the plaintiffs' flat at the rent of £80 per annum in 1914, since raised to £85. They paid the rates, which for the current year amounted to £18. Bray, J., held that, for the purpose of determining the standard rent, the rates could not be deducted. "The lease," he said, "set out the rent at £80 a year. That is *prima facie* the rent. The fact that the lessor undertakes the burden of paying the rates does not give any right to the tenant to a deduction from the rent in order to ascertain the standard rent." *Cf.* also *Lawrie* v. *Woods* [1920] 2 I. R. 106, *Isaacs* v. *Titlebaum* [1920] W. N. 29, and *Mackworth* v. *Hellard* [1921] 2 K. B. 755.

The "rent" is unaffected by the landlord ceasing to allow some collateral advantage, as, for example, discount on goods purchased by the tenant from him—*W. H. Brakspear & Sons, Lim.* v. *Barton* [1924] 2 K. B. 88.

Where a tenant agreed to pay £18 per annum with "an additional rent of 2s. a week as the tenant's contribution towards the expenses of the housekeeper for cleaning the premises, such additional rent to be recovered by distress," it was held that for the purpose of estimating the increase of rent authorised by the Act the landlord was entitled to take the standard rent at £23 4s. per annum—*L. H. Woods & Co., Lim.* v. *City and West End Properties, Lim.* [1921] 38 T. L. R. 98.

Sums reserved by a contemporaneous agreement for goodwill and fixtures, even though expressed to be recoverable as rent in arrear, are not rent within the meaning of this section—*Ellen* v. *Goldstein* [1920] W. N. 253.

[2] Where a house was let at one rent and sub-let at another at the time in relation to which the standard rent is calculated, the rent payable at that time by the occupier of the house was held to be the standard rent—*Glossop and Another* v. *Ashley* [1922] 1 K. B. 1. *Quære* whether this is a rule of general application. *Ibid.*

[3] Where a landlord was occupying his own house on August 3, 1914, the rent at which that house was last let before that date is the standard rent of that house. "Was not let" in § 12 (1) (*a*) does not mean "was unoccupied"—*O'Neill* v. *Duncan* [1921] 55 Ir. L. T. 84.

If a part of a house was let on August 3, 1914, but the house was not let as a whole, the rent at which it was last let as a whole before that date appears not to be the standard rent—*Lelyveld* v. *Peppercorn* [1924] 2 K. B. 638, and p. 72, *infra*.

[4] Where a house was let at a ground rent of £12 10s. per annum, and

Application and Interpretation of Act—*continued.*

sub-let by the tenant in separate tenements at rents aggregating £1 4s. 6d. per week, on August 3, 1914, and the rateable value of the house at that date was £26 per annum, neither the ground rent, nor the rent at which the house was sub-let, is the standard rent.

The ground rent is not the standard rent because it is "less than two-thirds of the rateable value," and by § 12 (7) this Act does not apply to such a rent or to the tenancy in respect of which it is paid.

The rent at which it was sub-let is not the standard rent because it is not the rent of the house as a whole.

In the absence, therefore, of evidence that the house was let otherwise than as above before August 3, 1914, the rent at which it was first let as a whole after that date is the standard rent—*Veale* v. *Cabezas* [1921] W. N. 311.

[5] Where an agreement to pay an increased rent is made before, but the first rent under such agreement is payable in respect of a period commencing after, the Act comes into operation, the rent has been "increased *since*" the Act within the meaning of § 1—*Goldsmith* v. *Orr* [1920] W. N. 81 and 250—and it cannot be argued that the house in such a case was let at a "progressive rent" within § 12 (1) (*a*), and that the maximum rent was therefore the standard rent, for a progressive rent under a tenancy agreement is a rent which is periodically increased—*ibid.*, *per* Bailhache, J., at p. 82.

[6] The meaning of this paragraph was discussed in *Westcott* v. *Bowes* [1925] 41 T. L. R. 164.

[7] "Rateable value" is defined in the Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), § 4, as "the gross value after deducting therefrom the probable annual average cost of the repairs, insurance and other expenses" necessary to maintain the hereditament in a state to command the rent. The words appear to have a similar meaning in the present Act—Cf. *Waller & Son, Lim.* v. *Thomas* [1921] 1 K. B. 541.

[8] A servant who is provided by his employer with a house cannot claim to be a tenant of his employer and so obtain the protection of the Increase of Rent, &c., Acts—*National Steam Car Co.* v. *Barham* [1919] 122 L. T. 315, nor can a caretaker who receives no remuneration but is allowed the use of certain rooms rent free—*Ecclesiastical Commissioners for England* v. *Hilder* [1920] W. N. 268.

A gamekeeper employed at a wage of 35s. per week with a house and fuel is not a tenant of the house. The contract between him and his master is a contract of service, not of tenancy—*Marquis of Bute* v. *Prenderleith* [1921] 1 Scots L. T. 175. *Cf.* also *Wallace* v. *Macaulay* [1923] Scots L. T. (Sh. Ct. Rep.) 120.

In Ireland it has been held that a tenant need not be in actual physical occupation of the dwelling-house in order to claim the protection of the Act—*Rock* v. *Burke* [1922] Ir. L. T. & Sol. J. 24.

In England, the same view seems to have been taken in *Collis* v.

Flower and Another [1921] 1 K. B. 409, but in *Hicks* v. *Scarsdale Brewery Co.* [1924] W. N. 189, where a county court judge made an order for possession, holding that the tenant not being in occupation was not entitled to the protection of the Acts, the Divisional Court dismissed an appeal, Swift, J., taking the same view as the lower Court and Acton, J., dissenting.

In *Keeves* v. *Dean* and *Nunn* v. *Pellegrini* [1924] 1 K. B. 685, Bankes, L.J., said, at p. 690, discussing the rights of a "statutory tenant": "I think it is a pity that that expression was ever introduced. It is really a misnomer, for he is not a tenant at all; although he cannot be turned out of possession so long as he complies with the provisions of the statute, he has no estate or interest in the premises such as a tenant has. His right is a purely personal one, and as such, unless the statute expressly authorises him to pass it on to another person, must cease the moment he parts with the possession or dies." *Cf.* also *ibid.*, *per* Lush, J., at p. 697.

A sub-tenant who acquires the reversion of the whole house and therefore becomes the landlord of his landlord is likewise not deprived of such protection—*Rock* v. *Burke* [1922] Ir. L. T. and Sol. J. 24.

[9] The words in § 12 (1) (*f*) were considered in the case of *Martin* v. *Watson & Egan* [1919] 2 I. R. 332. The facts of that case will be found on p. 55, *supra*, and it was there held that B was a person deriving title under the mortgagor within the meaning of this section.

The executor of a tenant is a person deriving title under the tenant and is entitled to the protection of this Act, even though he is not in physical occupation of the house—*Collis* v. *Flower and Another* [1921] 1 K. B. 409. An administrator is in a like position—*Mellows* v. *Low and Others* [1923] 1 K. B. 522.

It is to be observed that in both these cases the contractual tenancy was in existence between the landlord and the tenant at the date of the tenant's death, but it is submitted that if the tenancy were only a statutory one, a like reasoning would apply—*Cf. per* McCardie, J., in *Mellows* v. *Low and Others*, *supra*, at p. 526.

[10] The word "family" in § 12 (1) (*g*) includes the husband of the deceased tenant—*Salter* v. *Lask* and *Lask* v. *Cohen and Another*, both reported in [1925] 1 K. B. 584.

[**1920 Act, § 12 (2).**]—(2) This Act shall apply to a house or a part of a house let as a separate dwelling,[1] where either the anual amount [2] of the standard rent or the rateable value [3] does not exceed—

(*a*) in the metropolitan police district,[4] including therein the City of London, one hundred and five pounds;

(*b*) in Scotland, ninety pounds; and

(*c*) elsewhere, seventy-eight pounds;

Application and Interpretation of Act—*continued.*

and every such house or part of a house shall be deemed to be a dwelling-house to which this Act applies [5]:

Provided that—

(i) this Act shall not, save as otherwise expressly provided, apply to a dwelling-house bonâ fide let at a rent which includes payments in respect of board, attendance,[6] or use of furniture[6]; and

(ii) the application of this Act to any house or part of a house shall not be excluded by reason only that part of the premises is used as a shop [7] or office or for business, trade, or professional purposes; and

(iii) for the purposes of this Act, any land or premises let together with a house shall, if the rateable value of the land or premises let separately would be less than one quarter of the rateable value of the house, be treated as part of the house, but, subject to this provision, this Act shall not apply to a house let together with land other than the site of the house.[8]

[**1923 Act, § 2 (1).**]—2. *Exclusion of dwelling-houses from application of principal Act in certain cases.*—(1) Where the landlord [9] of a dwelling-house to which the principal Act applies is in possession of the whole of the dwelling-house at the passing of this Act, or comes into possession of the whole of the dwelling-house at any time after the passing of this Act, then from and after the passing of this Act, or from and after the date when the landlord subsequently comes into possession, as the case may be, the principal Act shall cease to apply to the dwelling-house:

Provided that, where part of a dwelling-house to which the principal Act applies is lawfully sub-let, and the part so sub-let is also a dwelling-house to which the principal Act applies, the principal Act shall not cease to apply to the part so sub-let by reason of the tenant being in or coming into possession of that part, and, if the landlord is in, or comes into possession of, any part not so sub-let, the principal Act

shall cease to apply to that part, notwithstanding that a sub-tenant continues in, or retains, possession of any other part by virtue of the principal Act:

Provided also that, where a landlord comes into possession under an order or judgment made or given after the passing of this Act, on the ground of non-payment of rent, the principal Act shall, notwithstanding anything in the foregoing provisions of this sub-section, continue to apply to the dwelling-house.

[**1923 Act, § 2 (3).**]—2. (3) For the purposes of this section, the expression "possession" shall be construed as meaning "actual possession," [10] and a landlord shall not be deemed to have come into possession by reason only of a change of tenancy made with his consent.

[**1923 Act, § 10 (1).**]—10. *Amendment of provisions of the principal Act as to houses let with furniture, &c.*—(1) For the purposes of proviso (i) to sub-section (2) of section twelve of the principal Act (which relates to the exclusion of dwelling-houses from the principal Act in certain circumstances), a dwelling-house shall not be deemed to be bonâ fide let at a rent which includes payments in respect of attendance or the use of furniture unless the amount of rent which is fairly attributable to the attendance or the use of the furniture, regard being had to the value of the same to the tenant, forms a substantial portion of the whole rent.

Cf. 1915 Act, § 2 (2); 1919 Act, § 4; 1919 (No. 2) Act, § 1 (5).

For definition of "standard rent," v. § 12 (1) (*a*); "rateable value," v. § 12 (1) (*e*); "let," v. § 12 (1) (*g*); "landlord" and "tenant," v. § 12 (1) (*f*) and (*g*).

For limitation as to new houses, v. § 12 (9).

"Save as otherwise expressly provided," *i.e.*, §§ 9 and 10.

For dwelling-houses to which the principal Act applies, v. § 12 (2) and (9).

"At the passing of this" (1923) "Act," *i.e.*, on 31 July, 1923.

For power of Court to direct that the 1923 Act, § 2 (1), shall not operate in certain cases, v. 1923 Act, § 4, at p. 51, *supra*, and 1924 Act, § 2 (2), at p. 49, *supra*.

[1] The house must be let "as a separate dwelling." A public-house of

Application and Interpretation of Act—*continued.*

which about seven rooms are used as a private residence is so used—*Epsom Grand Stand Association* v. *Clarke* [1919] W. N. 170. So is a garage in the upper floor of which the chauffeur lives—*Callaghan* v. *Bristowe* [1920] W. N. 308. But every case is to be judged on its own facts—*ibid.* See further, p. 39, *supra.*

The words "let as a separate dwelling" have been held to qualify only the words "a part of a house," and not "a house." A mortgagor freeholder, therefore, of a house the rateable value of which is within the Act is entitled to the protection of the Act although he himself is occupying the house—*Woodifield* v. *Bond* (*No.* 1) [1921] W. N. 309. The authority of this case is respectfully questioned. The learned judge refers to the title of the Act as supporting his decision, but the title of the Act is "An Act to consolidate and amend the law with respect to the increase of rent and recovery of possession of premises in certain cases, and the increase of the rate of interest on, and the calling in of securities on *such* premises. . . ." It is submitted that the Act has no application to a case in which the house is not let, unless the house is one to which the Act has become applicable at some time. *Cf.* § 12 (6). It has been so held in Ireland—*In re Hegan* [1921] 1 Ir. R. 189.

[2] Where there is one letting at one rent of different suites of rooms in one house, there are no materials for saying what rent is payable in respect of each suite, and if the total rent reserved exceeds the amount provided by the Act, the tenant cannot claim to apportion the rent between the two suites and so obtain protection—*Rider* v. *Rollitt* [1920] W. N. 227.

[3] For the purposes of this Act, the valuation of a building, used for public purposes, is the figure set out in the rate-book for the assessment of a private occupier of that building. Cf. *Allen* v. *Inspector-General R.I.C.* [1920] 54 Ir. L. T. 119.

[4] The metropolitan police district is the area in which the metropolitan police force has jurisdiction. The area includes:—

(1) Westminster and such of the parishes, townships, precincts, and places in the counties of Middlesex, Surrey, and Kent as are specified in the Schedule to the Metropolitan Police Act, 1829 (10 Geo. 4. c. 44).

(2) Such parishes or places within twelve miles of Charing Cross as are included in it by Order in Council under that Act (*ibid.*, § 34), extended to fifteen miles by the Metropolitan Police Act, 1839 (2 & 3 Vict. c. 47), § 2.

(3) Such part of the Central Criminal Court district (Central Criminal Court Act, 1834 (4 & 5 Will. 4. c. 36), §§ 2 and 3) as is included in it by Order in Council (Metropolitan Police Act, 1839, § 2).

(4) Every part of the River Thames within and adjoining the counties of Middlesex, Surrey, Berkshire, Essex, and Kent (*ibid.*, § 5).

[5] The tenant of a dwelling-house to which this Act does, but the former Acts did not, apply is entitled to the benefit of the provisions

of this Act unless he has been in fact ejected by the order of the Court before this Act came into operation—*Remon* v. *City of London Real Property Co., Lim.* [1921] 1 K. B. 49. *Cf.* also §§ 5 (3) and 19 (3) of the 1920 Act, and *Dobson* v. *Richards* [1919] W. N. 166.

[6] Prior to the passage of the 1923 Act, a series of cases had discussed in detail the meaning of the word "attendance" in the 1920 Act, § 12 (2) (i). In so far as they measure the extent of attendance which would exclude the operation of the 1920 Act, they cannot, by reason of the 1923 Act, § 10 (1), necessarily be regarded as authorities. Whether they are so or not depends upon whether § 10 (1) of the 1923 Act is treated as declaratory or as enunciating a new standard. But, it is submitted, that those cases in so far as they determine what acts amount to "attendance" are clearly still good law. They are of use therefore for the purpose of assisting the selection of those acts which have to be valued in accordance with the provisions of the 1923 Act, § 10 (1).

The removal of house refuse from, or the carrying of coals to, a flat amounts to "attendance"—*Nye* v. *Davis* [1922] 2 K. B. 56. In that case Horridge, J., said, at p. 58: "I am not going to enter into speculative inquiries whether or not the man who watered the garden or attended to the lift would be rendering 'attendance' to the occupier of the flat, but I am absolutely clear in my own mind that a man who does the work which is necessary upon the flat itself, taking up coals and taking away refuse, is rendering attendance in respect of the demised premises." *Cf.* also *Dick* v. *Duncan* [1923] 67 S. J. 384.

So, too, the delivery by a resident housekeeper of letters, messages and parcels constitutes "attendance"—*Wood* v. *Carwardine* [1923] 2 K. B. 185.

On the other hand, the mere cleaning of passages and stairs used by the tenant of a flat in common with other tenants is not "attendance" —*King* v. *Millen* [1922] 2 K. B. 647; nor is the provision of a good and sufficient supply of hot water—*Wood* v. *Carwardine, supra.*

In *King* v. *Millen, supra,* Bailhache, J., said, at p. 649: "There is no demise of the hall and staircase to the tenant, but a mere easement is given to him, and, in my opinion, a mere contract to keep clean something which is not demised to the tenant does not amount to 'attendance' within the section. There is nothing in the nature of personal service rendered to the tenant such as there was in *Nye* v. *Davis.*"

There is a similar line of cases in which the question at issue was whether the operation of the Act was excluded by reason of the fact that the premises were let at a rent which included payments for the use of furniture. They include *Sloane* v. *Cooke* [1919] 53 Ir. L. T. 209; *Rimmer and Another* v. *Carson* [1923] 39 T. L. R. 349; *Wilkes* v. *Goodwin* [1923] 2 K. B. 86; and *Crane* v. *Cox* [1923] 39 T. L. R. 204.

In *Wilkes* v. *Goodwin, supra,* the Court held that any amount of furniture was sufficient to bring a house within this paragraph, unless it was so trifling in quantity or value as to be negligible.

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The rent cannot be said to include payments in respect of acts which the landlord does not covenant to do, even though he may in fact have them done—at any rate, where the lease is under seal—*Wood* v. *Carwardine* [1923] 2 K. B. 185; *Michael* v. *Phillips* [1924] 1 K. B. 16.

Where a flat is let at a yearly rent of £100 and the tenant agrees "to pay the sum of 10s. weekly throughout the tenancy for service," it cannot be said that the rent "includes payments in respect of . . . attendance" within § 12 (2) (i)—*Wood* v. *Wallace* [1921] 37 T. L. R. 147.

So, too, a flat let at a yearly rental of £170, and the additional sum of £30 per annum for attendance "payable with and recoverable as rent," is not let at a rent which includes payments in respect of attendance—*Hocker* v. *Solomon* [1922] 91 L. J. Ch. 8. *Cf.*, however, *Nadler* v. *Wilson* [1924] 68 S. J. 772.

If premises are sub-let at a rent which includes payments in respect of the use of furniture to the occupier, they are outside the Acts. It is immaterial that they were and are let by the landlord to the tenant unfurnished—*Prout* v. *Hunter and Another* [1924] 2 K. B. 736.

The Acts deal with the status of the house, not with the terms of the tenancy. A house cannot have more than one status at the same time.—*Ibid.*

[7] It is not sufficient to exclude the operation of the Act that part of the house be used as a shop—*Greig* v. *Francis & Campion, Lim.* [1922] 38 T. L. R. 519.

If a shop and a dwelling-house are the subject of one letting, the tenant is entitled to the protection of the Acts, even though he has sub-let the whole of the dwelling-house part—*Murphy* v. *Porter & Blaney* [1919] 53 Ir. L. T. 151.

[8] The 1915 and 1919 Acts had added after the words "let as a separate dwelling" the words "where such letting does not include any land other than the site of the dwelling-house and a garden or other premises within the curtilage of the dwelling-house." The difficulty in interpreting these words is illustrated in the case of *Scott* v. *Austin* [1919] W. N. 85, and they are now omitted and the more specific words of § 12 (2) (iii) substituted.

The meaning of the word "house" in § 12 (2) (iii) was considered in the case of *Wellesley* v. *White* [1921] 2 K. B. 204. The Court, however, expressed no concluded opinion. Lush, J., inclined to the view that the word included premises connected with the house, and was not limited to the actual dwelling-house itself. *Cf.* also *Early* v. *Drummond and Another* [1923] 39 T. L. R. 171.

§ 12 (2) (iii) had to be read with § 13 while that section was in force. If, therefore, stabling accommodation, let with a house, was business premises within § 13, the fact that it was also land which, if let separately, would have been of a rateable value greater than one-

quarter of the rateable value of the house, did not exclude such stabling accommodation from the operation of the Act—*Read* v. *Goater and Another* [1921] 1 K. B. 611.

§ 13 is no longer in force, and such a line of reasoning would no longer apply.

A house may be let with land within the meaning of this paragraph, although a separate rent is reserved for the house and the land, if the two are expressed to be held as one holding—*Falconer* v. *Chisholm's Trustees* [1925] Scots L. T. 222.

[9] A leaseholder of premises may be landlord in relation to his sub-tenant within this section and not come within the word "tenant" in the first proviso, *e.g.*, in a case where he is the holder of a long lease, of which a substantial portion remains unexpired—*per* Darling, J., in *Jenkinson* v. *Wright* [1924] 2 K. B. 645, at p. 649.

[10] Where a tenant abandons possession of premises to which the Acts apply, and the landlord's agent after visiting the premises to see that all is in order, relets them at once to a new tenant, the landlord cannot be said to have come into "actual possession" within the meaning of the 1923 Act, § 2 (3)—*Hall* v. *Rogers* [1925] 69 S. J. 397.

[1920 Act, § 12 (3).]—(3) Where, for the purpose of determining the standard rent or rateable value of any dwelling-house to which this Act applies, it is necessary to apportion the rent at the date in relation to which the standard rent is to be fixed, or the rateable value of the property in which that dwelling-house is comprised, the county court may, on application by either party, make such apportionment as seems just, and the decision of the court as to the amount to be apportioned to the dwelling-house shall be final and conclusive.

Cf. 1915 Act, § 2 (3).

For definition of "standard rent," v. § 12 (1) (*a*); "rateable value," v. § 12 (1) (*e*).

For dwelling-houses to which this Act applies, v. § 12 (2) and (9).

For forms of summons under this sub-section, v. Appendix III., Form 5.

For form of certificate, v. Appendix III., Form 6.

This section may be invoked without claiming other relief—*R.* v. *Judge of the Marylebone County Court; ex parte Boon* [1923] 1 K. B. 365.

Where a house is let to a tenant and the tenant undertakes to give to the landlord the use of certain rooms, this fact does not entitle the tenant to apportionment under this section—*Hornsby* v. *Maynard* [1925] 1 K. B. 514.

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Where a house was not let as a whole on August 3, 1914, but was in part let on that date, the Divisional Court held that there was no jurisdiction to apportion the rent at which the whole house was let before August 3, 1914. They came to the conclusion that as it was not let as a whole on August 3, 1914, there was no rent to apportion in relation to that date, but they were not prepared to bring into operation the alternative definition in § 12 (1) (*a*), because they were of opinion that it could not be said that the house "was not let on that date," because part of it was so let—*Lelyveld* v. *Peppercorn* [1924] 2 K. B. 638. *Cf. Joy* v. *Eppner* [1925] 1 K. B. 362, and p. 76, *infra.*

An apportionment of the standard rent under this section entitles a tenant to recover from his landlord under § 14 (1) rent paid before, as well as after, the date of the apportionment, in so far as it exceeds the amount of the standard rent so apportioned—*Kimm* v. *Cohen* [1924] 40 T. L. R. 123.

By obtaining an order for apportionment of the standard rent of premises let to him, the tenant does not avoid an existing lease. The rent apportioned is substituted for the rent reserved, but in other respects the lease holds good—*Fumasoli* v. *Comyn and Fish* [1925] 132 L. T. 490.

A landlord cannot resist an application for apportionment at the suit of his tenant upon the ground that the standard rent of the part of the house occupied by the tenant is the rent at which that part was first let separately, unless there has been such a substantial structural alteration as to alter the physical identity of the house—*Marchbank* v. *Campbell* [1923] 1 K. B. 245. In this case M. was the tenant of two upper floors at a rent of £150 per annum. C. was her landlord, and occupied the lower floors. The standard rent of the whole house was £70 per annum. In 1920 C. put up a partition with locked door and fanlight on the second floor landing, and so shut off the part in the occupation of M. from the rest of the house. One of the rooms on the second floors, formerly a bedroom, was converted into a kitchen by building a dresser, fixing up a gas cooker, and laying on gas and water. A loft in the roof was floored for use as a boxroom, and the access to it was enlarged. Separate gas and electric meters were put in, and a bell was fixed at the front door to ring in the flat. The county court judge held as a fact that these alterations had created a new dwelling-house, and the Divisional Court held that there was evidence to support his finding. *Cf.* also *Darrell* v. *Whitaker and Another* [1923] 39 T. L. R. 447, as to which case v. p. 78, *infra.*

The standard rent of a house is *prima facie* the rent at which it was let on August 3, 1914. The rent at which it was then let, if it was not then separately let, but formed part of a house let as a whole, is such proportion of the rent at which the whole was let as seems just to the Court. "To justify a judge in finding that the part was first let when it was first let separately, there must be not merely a new and separate dwelling-house in law, by virtue of a new and separate letting, but a new and separate dwelling-house in fact by virtue of substantial structural alteration"—*Marchbank* v. *Campbell, supra, per* Darling and Salter, JJ., at p. 250. *Cf.* also *Sinclair* v. *Powell* [1922] 1 K. B. 393, and *Sutton* v. *Begley* [1923] 2 K. B. 694.

It is a question of fact in each case—*Woodhead* v. *Putnam* [1923] 1 K. B. 252.

A case where upon the facts apportionment was considered necessary was *Woodward* v. *Samuels* [1920] W. N. 82. S. was the tenant of a house at the rent of £45, the rates and taxes being £30 per annum. In 1919 he bought the house, and converted it into three flats at the cost of £35. He then let them separately at the total rent of £150 odd. The tenant of one floor claimed that the rent was in excess of the standard rent, and asked the county court judge to apportion. The county court judge held that, as the applicant's flat was first let as a separate dwelling-house at the rent he was now paying, that was the standard rent. The Divisional Court reversed this decision, and held that this was just the case to which § 2 (3) of the 1915 Act [*cf.* § 12 (3) of this Act] applied.

The fact that at the time when the part of the house was first let separately the whole house did not come within the Increase of Rent, &c., Acts is irrelevant—*Woodhead* v. *Putnam* [1923] 1 K. B. 252. *Dicta* to a contrary effect in the Divisional Court, and by Scrutton, L.J., in the Court of Appeal, in *Sinclair* v. *Powell*, were not approved by the majority of the Court of Appeal in that case, and the law as above laid down in *Woodhead* v. *Putnam* would appear to be the correct view.

In order to entitle the tenant to apportionment, it is now necessary that the "property" in which his dwelling-house is comprised should be a dwelling-house, or should be subject to the Act—*Woodhead* v. *Putnam*, *supra*.

In a converse case, where three houses were knocked together into one factory, the Court held that the standard rent was the rent at which the factory was first let, and not the sum of the rents at which the three houses were let on August 3, 1914, because the building, when altered, was held to be substantially a different building—*Phillips* v. *Barnett* [1922] 1 K. B. 222.

Where a landlord has reconstructed a house as a whole, and effected great improvements in one part of it, the tenant of another part which has been only slightly altered, but which has indirectly derived benefit from the improvements, is not entitled to an apportionment of the standard rent—*Stockham* v. *Easton* [1924] 1 K. B. 52.

Where a house on August 3, 1914, consisted of six floors, divided into two groups of floors (each group being separately rated and let), and the Court has to apportion the standard rent of one floor, the correct way is to apportion the rent of the group to which the floors belongs, and not the aggregate rent of the two groups of floors—*Barrett & Evans* v. *Hardy Bros.* (*Alnwick*), *Lim.* [1925] 41 T. L. R. 426.

Where at the date in relation to which the standard rent is determined the tenant paid the rates and other expenses incidental to his occupation (such as gas, &c.), the fact that such expenses are paid by a landlord for a tenant claiming apportionment does not entitle the landlord to add a proportion of such expenses for the whole house to the standard rent for the purpose of the apportionment—*Bambridge* v. *Congdon* [1925] W. N. 130. After the apportionment he may presumably add that proportion on the ground that it is a liability transferred to him within § 2 (3) *q.v.*

[**1920 Act, § 12 (4).**]—(4) Subject to the provisions of this Act, this Act shall apply to every mortgage [1] where the mort-

Application and Interpretation of Act—*continued.*

gaged property consists of or comprises one or more dwelling-houses to which this Act applies, or any interest therein, except that it shall not apply—

(*a*) to any mortgage comprising one or more dwelling-houses to which this Act applies and other land if the rateable value of such dwelling-houses is less than one-tenth of the rateable value of the whole of the land comprised in the mortgage; or

(*b*) to an equitable charge by deposit of title deeds or otherwise; or

(*c*) to any mortgage which is created after the passing of this Act.

Cf. 1915 Act, § 2 (4); 1919 Act, § 4.

For definition of "mortgage," v. § 12 (1) (*h*); "rateable value," v. § 12 (1) (*e*).

For dwelling-houses to which this Act applies, v. § 12 (2) and (9).

[1] Cf. *London County and Westminster Bank* v. *Tompkins* [1918] 1 K. B. 515, and *Jones* v. *Woodward* [1917] 116 L. T. 378, cited at p. 55, *supra.*

The words "let as a separate dwelling" in § 12 (2) have been held to qualify only the words "a part of a house" and not "a house." A mortgagor freeholder, therefore, of a house, the rateable value of which is within the Act, is entitled to the protection of the Act, although he himself is occupying the house—*Woodifield* v. *Bond* (*No.* 1) [1921] W. N. 309. But v. further as to this case, p. 67, *supra.*

[**1920 Act, § 12 (5).**]—(5) When a mortgage comprises one or more dwelling-houses to which this Act applies and other land, and the rateable value of such dwelling-houses is more than one-tenth of the rateable value of the whole of the land comprised in the mortgage, the mortgagee may apportion the principal money secured by the mortgage between such dwelling-houses and such other land by giving one calendar month's notice in writing to the mortgagor, such notice to state the particulars of such apportionment, and at the expiration of the said calendar month's notice this Act shall not apply to the mortgage so far as it relates to such other land, and for all purposes, including the mortgagor's right of redemption, the said mortgage shall operate as if it were a separate mortgage

for the respective portions of the said principal money secured by the said dwelling-houses and such other land, respectively, to which such portions were apportioned:

Provided that the mortgagor shall, before the expiration of the said calendar month's notice, be entitled to dispute the amounts so apportioned as aforesaid, and in default of agreement the matter shall be determined by a single arbitrator appointed by the President of the Surveyors' Institution.

This sub-section was newly introduced by the 1920 Act.

For definition of "mortgage," v. § 12 (1) (*h*); "rateable value," v. § 12 (1) (*e*); "mortgagee," v. § 12 (1) (*f*); "mortgagor," v. § 12 (1) (*f*).

For dwelling-houses to which this Act applies, v. § 12 (2) and (9).

[**1920 Act, § 12 (6).**]—(6) Where this Act has become applicable to any dwelling-house or any mortgage thereon it shall continue to apply thereto whether or not the dwelling-house continues to be one to which this Act applies.

Cf. 1915 Act, § 2 (5).

For definition of "mortgage," v. § 12 (1) (*h*).

For dwelling-houses to which this Act applies, v. § 12 (2) and (9).

The meaning of this sub-section is somewhat obscure. Lush, J., treated it in *King* v. *York* [1919] 88 L. J. K. B. 839, at p. 840, as if the words were "whether or not the dwelling-house continues to be *used as* one to which this Act applies," *i.e.*, as a dwelling-house. Cf. also *Hyman* v. *Steward* [1925] W. N. 135. See further, an alternative interpretation suggested by the Author in an Article in the Solicitor's Journal (68 S. J. 36).

This sub-section does not mean that the Act shall continue to apply, even though the house has been subjected to such structural alteration as to cease to be the same house—*Phillips* v. *Barnett* [1922] 1 K. B. 222.

So, too, if premises formerly let as a dwelling-house are let as business premises, they cease to be premises to which the Act applies, despite this sub-section—*Williams* v. *Perry* [1924] 1 K. B. 936; and if premises used as a dwelling-house and shop are let separately, the Act ceases to apply to the shop, although when formerly let together the Act applied to the whole premises—*Phillips* v. *Hallahan* [1925] W. N. 103.

The furnishing and letting furnished of a dwelling-house which had previously been let unfurnished, is a sufficient destruction of its identity, within the principle of *Phillips* v. *Barnett*, *supra*, to exclude the operation of this sub-section—*per* Scrutton, L.J., in *Prout* v. *Hunter and Another* [1924] 2 K. B. 736, at p 743.

Application and Interpretation of Act—*continued.*

[**1920 Act, § 12 (7).**]—(7) Where the rent payable in respect of any tenancy of any dwelling-house is less than two-thirds of the rateable value thereof, this Act shall not apply to that rent or tenancy nor to any mortgage by the landlord from whom the tenancy is held of his interest in the dwelling-house, and this Act shall apply in respect of such dwelling-house as if no such tenancy existed or ever had existed.

Cf. 1915 Act, § 2 (6), and Courts (Emergency Powers) Act, 1917, § 7.

For definition of "tenancy," v. § 12 (1) (*g*); "rateable value," v. § 12 (1) (*e*); "mortgage," v. § 12 (1) (*h*); "landlord," v. § 12 (1) (*f*) and (*g*).

Suppose a house to be rated at £100 a year, to be situate in London and let at £60 a year. In estimating the standard rent, this tenancy may be wholly ignored, even though it subsisted on August 3, 1914. In such a case it would be necessary to inquire (1) at what rent it was last let before that date; or (2) if it was first let (apart from this £60 a year tenancy) after August 3, 1914, at what rent it was first let.

"Rent" means the rent reserved by the lease, not the net amount which the landlord receives after paying the rates and taxes—*Mackworth* v. *Hellard* [1921] 2 K. B. 755. *Cf.* also p. 63, *supra.*

"Rateable value" means "net rateable value"—*Waller & Son, Lim.* v. *Thomas* [1921] 1 K. B. 541.

Where the rent reserved under an attornment clause in a mortgage deed—namely, a peppercorn—is less than two-thirds of the rateable value of the dwelling-house mortgaged, the tenancy thereby created is to be disregarded—*Jenkinson* v. *Wright* [1924] 2 K. B. 645.

Where a house was let at £20 a year on August 3, 1914, and the then rateable value was £68 per annum, that tenancy must be ignored for the purpose of determining the standard rent. The rent at which the house was last let before that date is the standard rent—*W. H. Brakspear & Sons, Lim.* v. *Barton* [1924] 2 K. B. 88.

So, too, where a house newly-built in 1910 was only let at a ground rent of £8 10s. per annum, a sum less than two-thirds of the rateable value, until 1923, when it was divided into flats and sub-let, the tenant of one flat cannot obtain an order of apportionment of the standard rent, for there is no standard rent of the property in which his flat is comprised within § 12 (3), inasmuch as the letting at £8 10s. per annum is to be ignored—*Joy* v. *Eppner* [1925] 1 K. B. 362. *Cf.* also *Veale* v. *Cabezas* [1921] W. N. 311, and *supra,* p. 64.

[**1920 Act, § 12 (8).**]—(8) Any rooms in a dwelling-house subject to a separate letting wholly or partly as a dwelling

shall, for the purposes of this Act, be treated as a part of a dwelling-house let as a separate dwelling.

Cf. 1919 Act, § 5 (4).
For definition of "let," v. § 12 (1) (*g*).

[1920 Act, § 12 (9).]—(9) This Act shall not apply to a dwelling-house [1] erected after or in course of erection on the second day of April nineteen hundred and nineteen, or to any dwelling-house which has been since that date or was at that date being bonâ fide reconstructed [2] by way of conversion into two or more separate [3] and self-contained [4] flats or tenements; but, for the purpose of any enactment relating to rating,[5] the gross estimated rental or gross value of any such house to which this Act would have applied if it had been erected or so reconstructed before the third day of August nineteen hundred and fourteen, and let at that date, shall not exceed—

(*a*) if the house forms part of a housing scheme to which section seven of the Housing, Town Planning, &c. Act, 1919,[6] applies, the rent (exclusive of rates) charged by the local authority in respect of that house; and

(*b*) in any other case the rent (exclusive of rates) which would have been charged by the local authority in respect of a similar house forming part of such a scheme as aforesaid.

Cf. 1919 Act, § 8.
For definition of "let," v. § 12 (1) (*g*).
For dwelling-houses "to which this Act would have applied," v. § 12 (2).
As to amendment of this sub-section in the application of the Act to Ireland, v. § 18 (2) (*f*).

[1] "A dwelling-house" in this sub-section does not necessarily mean the whole building. Where, therefore, part of a building is converted after April 2, 1919, into two or more separate and self-contained flats or tenements the Acts cease to apply to that part, but not to the remainder if that is separately let and was unaffected by the conversion. The tenant of such a part may claim an apportionment of the standard rent of the whole building—*Abrahart* v. *Webster* [1925] 1 K. B. 563.

[2] Note that the reconstruction must be:—
(*a*) by way of conversion;
(*b*) into two or more *separate and self-contained* flats or tenements.

Application and Interpretation of Act—*continued.*

[3] "Separate" means "distinct," not "separated physically or partitioned off"—*Smith* v. *Prime* [1923] W. N. 131.

"Just as the presence of a partition would not by itself constitute a reconstruction by way of conversion into separate flats, so the absence of a partition, where there was a *bona fide* reconstruction resulting in the flats being distinct, so as to be capable of being held as separate and distinct dwelling-houses, did not prevent them from coming within the section"—*per* Salter, J., *ibid.* at p. 132.

[4] "Self-contained" means something more than separate. The flat or tenement, to be self-contained, must be within a circle or ambit, and must not be scattered; but the mere fact that the coal cellar and servants' quarters, for example, were outside the flat itself would not necessarily prevent its being self-contained—*ibid.*

The question whether a flat is self-contained does not depend on the presence or absence of a partition dividing it from the rest of the premises—*Darrell* v. *Whitaker and Another* [1923] 39 T. L. R. 447.

[5] The Lands Valuation (Scotland) Act, 1854 (17 & 18 Vict. c. 91), is not an enactment relating to rating within this sub-section—*Miller* v. *Glasgow Corporation* [1925] Scots L. T. 251.

[6] The Housing, Town Planning, &c., Act, 1919 (9 & 10 Geo. 5. c. 35), § 7, gave power to the Local Government Board, now the Ministry of Health, to assist financially local authorities who had suffered loss in carrying out housing schemes. This section is now repealed subject to saving for existing liabilities—v. Housing, &c., Act, 1923 (13 & 14 Geo. 5, c. 24), § 24 and Sch. III., and *ibid.* § 6 (1).

[**1920 Act, § 12 (10).**]—(10) Where possession has been taken of any dwelling-houses by a Government department during the war, under the Defence of the Realm regulations, for the purpose of housing workmen, this Act shall apply to such houses as if the workmen in occupation thereof at the passing of this Act were in occupation as tenants of the landlords of such houses.

For definition of "tenant" and "landlord," v. § 12 (1) (*f*) and (*g*).
"At the passing of this Act," *i.e.*, on July 2, 1920.

This Act applies to the Prison Commissioners for Scotland—*Prison Commissioners for Scotland* v. *Donaldson* [1922] Scots L. T. (Sh. Ct. Rep.) 91.

And *quære* whether in view of § 12 (10) it can be said that the Crown is included by necessary implication—*ibid.*

It seems improbable that such a view would be shared by the English Courts.

And, indeed, it has now been held in Scotland, in an action at the suit of the Lord Advocate representing the War Office, that this Act does not bind the Crown—*Lord Advocate* v. *Barlow* [1924] Scots L. T. (Sh. Ct. Rep.) 72.

APPLICATION TO BUSINESS PREMISES.

[1920 Act, § 13.]—13. (1) *This Act shall apply to any premises used for business* [1] *trade or professional purposes or for the public service as it applies to a dwelling-house, and as though references to "dwelling-house" "house" and "dwelling" included references to any such premises, but this Act in its application to such premises shall have effect subject to the following modifications:—*

(*a*) *The following paragraph shall be substituted for paragraph* (*c*) *of sub-section* (1) *of section two:*

(*c*) *In addition to any such amounts as aforesaid, an amount not exceeding thirty-five per centum of the net rent:*

(*b*) *The following paragraph shall be substituted for paragraph* (*d*) *of sub-section* (1) *of section five:*

(*d*) *the premises are reasonably required by the landlord for business trade or professional purposes or for the public service, and (except as otherwise provided by this sub-section) the court is satisfied that alternative accommodation, reasonably equivalent as regards rent and suitability in all respects, is available:*

(*c*) *The following paragraph shall be added after paragraph* (*g*) *of the same sub-section:*

(*h*) *The premises are bonâ fide required for the purpose of a scheme of reconstruction or improvement* [2] *which appears to the court to be desirable in the public interest:*

(*d*) *Paragraph* (*i*) *of the same sub-section shall not apply:*

(*e*) *Sections nine and ten shall not apply.*

(2) *The application of this Act to such premises as aforesaid shall not extend to a letting or tenancy in any market or fair where the rent or conditions of tenancy are controlled or regulated by or in pursuance of any statute or charter.*

Application to Business Premises—*continued.*

(3) *This section shall continue in force until the twenty-fourth day of June nineteen hundred and twenty-one.*

This section was newly introduced by the 1920 Act.

For dwelling-houses to which this Act applies, v. § 12 (2) and (9).

For definition of "landlord," v. § 12 (1) (*f*) and (*g*); "tenancy," v. § 12 (1) (*g*).

This section ceased to be in force in England and Ireland on June 24, 1921 (v. § 13 (3)), and in Scotland on May 28, 1921 (v. § 18 (1) (*a*)).

It is thought, however, that a short note of some cases decided under it may still be of value.

[1] While this section was in force premises used as a lodging house were held to be used for business purposes within this section. The landlord could not, therefore, recover possession upon the ground that he required them for his own occupation, unless he showed that he required the premises for business, trade, or professional purposes, or for the public service (v. § 13 (1) (*b*), amending § 5 (1) (*d*))—*Tompkins* v. *Rogers* [1921] 2 K. B. 94.

The fact, however, that such premises came within § 13 did not prevent their continuing to be a dwelling-house within the Act upon the expiry of § 13, if they were occupied and let as a dwelling-house. If, therefore, after § 13 had expired, a landlord showed that he required them for his own occupation and otherwise complied with § 5 (1) (*d*), he could recover possession—*McQuillan* v. *Clinton* [1921] 55 Ir. L. T. 143. *Cf. Duke of Richmond and Gordon and another* v. *Dewar and the Cadogan Hotel Co., Ltd., and Others* [1921] W. N. 356; *Colls* v. *Parnham* [1921] W. N. 358; *Cohen* v. *Benjamin* [1922] 67 S. J. 147.

The Irish Courts, in *Laird* v. *Graves* [1921] 55 Ir. L. T. 55, expressed the view that § 13 applied only if the premises were used exclusively for business purposes, but in view of the decision of *Tompkins* v. *Rogers, supra*, this view would not appear to be in accordance with the English authorities. *Cf.*, however, the observations of McCardie, J., in *Waller & Son, Lim.* v. *Thomas* [1921] 1 K. B. 541, at pp. 553, 554. The expiry of § 13 has, however, deprived this question of much of its former importance.

[2] "A scheme of reconstruction or improvement" implies something more than the substitution of one kind, for another kind, of business premises, even though it may be said that such a substitution would be an improvement. The words refer to something which would be generally advantageous to the whole community, as, for example, the widening of a street, the destruction of a "rookery," or some other well-defined public improvement—*Mitchell* v. *Townend & Co.* [1921] 2 K. B. 91.

The effect of §§ 12 (2) and 13 was that, where business premises were

let at a rent which included the use of furniture, the Act did not apply to such premises—*Necchi* v. *Cranchi* [1921] 37 T. L. R. 934.

GENERAL.—RECOVERY OF SUMS MADE IRRECOVERABLE, &c.

[**1920 Act, § 14 (1).**]—14. (1) Where any sum has, whether before or after the passing of this Act, been paid on account of any rent or mortgage interest, being a sum which is by virtue of this Act, or any Act repealed by this Act, irrecoverable by the landlord or mortgagee, the sum so paid shall be recoverable from the landlord or mortgagee who received the payment or his legal personal representative by the tenant or mortgagor by whom it was paid, and any such sum, and any other sum which under this Act is recoverable by a tenant from a landlord or payable or repayable by a landlord to a tenant, may, without prejudice to any other method of recovery, be deducted by the tenant or mortgagor from any rent or interest payable by him to the landlord or mortgagee.

[**1923 Act, § 8 (2).**]—8. (2) Any sum paid by a tenant or mortgagor which, under sub-section (1) of section fourteen of the principal Act is recoverable by the tenant or mortgagor shall be recoverable at any time within six months[1] from the date of payment but not afterwards, or in the case of a payment made before the passing of this Act,[2] at any time within six months from the passing of this Act but not afterwards.

[**1923 Act, § 8 (3).**]—(3) Nothing in this section shall affect the operation of the Rent Restriction (Notices of Increase) Act, 1923.

Cf. Courts (Emergency Powers) Act, 1917, § 5 (1).

For definition of "landlord," v. § 12 (1) (*f*) and (*g*); "mortgagee," v. § 12 (1) (*f*); "tenant," v. § 12 (1) (*f*) and (*g*); "mortgagor," v. § 12 (1) (*f*).

This section, which reproduces the Courts (Emergency Powers) Act, 1917, § 5, was found necessary because of the decision in *Sharp Brothers and Knight* v. *Chant* [1917] 1 K. B. 771. That case was decided under

Recovery of Sums made Irrecoverable, &c.—*continued.*

the 1915 Act, § 1 (1), and it was there held that where a landlord had increased the rent of premises to which the Act applied since August 3, 1914, and the tenant, in ignorance of such Act, had paid such increased rent accruing due after November 25, 1915, but on becoming aware of the Act had deducted from the rent paid by him the amount of the increase as from the last-mentioned date, the landlord was entitled to recover such amount, for though the increased payments would have been irrecoverable by the landlord if the tenant had not paid them, yet the tenant, having paid them under mistake of law, was not entitled to recover them from the landlord by any means whatever.

This decision of the Court of Appeal reversed the decision of the Divisional Court, and they further held that such payments were not "a fine, premium or other like sum" within the meaning of § 1 (2) of the 1915 Act (*cf.* § 8 of this Act), and were not recoverable on that ground. *Cf.* also *Dickson* v. *Weir* [1918] 2 Scots L. T. 237.

The Courts (Emergency Powers) Act, 1917, § 5, limited the recoverability to "within six months from the date of payment." These words are omitted from section 14 (1) of the 1920 Act, but by virtue of § 19 (3) the repeal of the Courts (Emergency Powers) Act, 1917, § 5, does not render recoverable sums irrecoverable on July 2, 1920. Sums paid before January 2, 1920, are therefore irrecoverable by the tenant—*Rawlinson* v. *Alger* [1921] 90 L. J. K. B. 497.

[1] This limit of recoverability has been re-introduced by 1923 Act, § 8 (2), with the result that on January 31, 1924 (six months after the passing of the 1923 Act), rent overpaid before the passing of the 1923 Act ceased to be recoverable by the tenant either by action or by deduction from future payments of rent becoming due by him—*Bayley* v. *Walker* [1925] 1 K. B. 447. *Cf.*, however, *Goklee* v. *Burgener* [1925] 69 S. J. 311.

To entitle a tenant to recover over-payments, it is sufficient for him to begin the proceedings to recover them by the issue of a writ or summons within six months of the date of payment. It is not necessary that he should obtain judgment for such sum within six months—*Lewis* v. *McKay; Algate* v. *Vugler; Clark* v. *Potter*, all reported in [1924] 2 K. B. 136; *Diment* v. *Roberts* [1925] 1 K. B. 9.

[2] The last day for issuing a writ to recover over-payments made before the passing of the 1923 Act was January 31, not January 30, 1924. The day on which the Act was passed (July 31, 1923) is excluded for the purpose of calculating the six months allowed by this sub-section —*Truss* v. *Olivier* [1924] 40 T. L. R. 588.

In the case of *Pringle* v. *Hales* [1925] 1 K. B. 573, a somewhat complicated point arose under this sub-section. A tenant lodged two plaints in the county court on January 30, 1924, one claiming apportionment of the standard rent, and the other under the 1920 Act, § 14 (1), in

respect of sums paid by him before July 31, 1923. The claim for apportionment could regularly be brought in the Court, in which the plaints were filed, but the claim for repayment could only be brought in that Court by leave of the judge or registrar upon an application supported by affidavit. No affidavit was sworn until February 5, 1924, but the plaint was entered, a plaint note under the seal of the Court was given to the plaintiff and a summons issued, all bearing the date January 30, 1924. By Ord. VII., r. 2. of the County Court Rules, 1903 to 1924, a summons to appear to a plaint shall be dated of the day on which the plaint was entered, and the date thereof shall be the commencement of the action. The Court held, that the irregular entry of the plaint and issue of the summons, before the necessary leave had been obtained, did not deprive the county court of jurisdiction to hear the action: that the irregularity could be waived by the defendant: that he had so waived it by appearing to the summons and raising a defence in no way challenging the jurisdiction of the Court: that the action must therefore be taken to have commenced on January 30, 1924, and that the plaintiff was entitled to recover.

[**1920 Act, § 14 (2).**]—(2) If—

(*a*) any person in any rent book or similar document makes an entry showing or purporting to show any tenant as being in arrear in respect of any sum which by virtue of any such Act is irrecoverable; or

(*b*) where any such entry has, before the passing of this Act, been made by or on behalf of any landlord, the landlord, on being requested by or on behalf of the tenant so to do, refuses or neglects to cause the entry to be deleted within seven days,

that person or landlord shall, on summary conviction, be liable to a fine not exceeding ten pounds, unless he proves that he acted innocently and without intent to deceive.

Cf. Courts (Emergency Powers) Act, 1917, § 5 (2).

For definition of "tenant," v. § 12 (1) (*f*) and (*g*); "landlord," v. § 12 (1) (*f*) and (*g*).

For other criminal responsibility of landlords, v. §§ 3 (2), 8 (2), 10, 11, and 1923 (Notices of Increase) Act, § 2 (2).

For criminal responsibility of tenants, v. § 15 (2), and 1923 Act, § 7 (2).

By the Statement of Rates Act, 1919 (9 & 10 Geo. 5. c. 31), § 1 (1), "From and after" January 1, 1920, "every document containing a demand for rent or receipt for rent, which includes any sum for rates paid or payable under any statutory enactment by the owner instead

Recovery of Sums made Irrecoverable, &c.—*continued.*

of the occupier, shall state either the annual, half-yearly, quarterly, monthly, or weekly amount of such rates paid or payable in accordance with the last demands received by the owner from the rating authorities at the time of making his demand or giving his receipt in respect of the hereditament in question: Provided that, where such a statement as is required by this section has been furnished in connection with a demand for rent or receipt for rent in respect of a particular period, it shall not be necessary to furnish the statement upon any subsequent demand for rent or receipt for rent in respect of that period."

The Act does not apply to weekly lettings at inclusive rentals in any market established under or controlled by statute (§ 1 (2)) nor to Scotland or Ireland (§ 4 (3)).

"Demand for rent" and "receipt for rent" include "a rent-book, rent-card, or any document used for the notification or collection of rent due or for the acknowledgment of the receipt of the same" (§ 2).

"If any person makes a demand for rent or gives a receipt for rent in contravention of this Act, he shall, in respect of each offence, be liable on summary conviction to a fine not exceeding forty shillings" (§ 3).

CONDITIONS OF STATUTORY TENANCY.

[**1920 Act, § 15.**]—15. (1) A tenant who by virtue of the provisions of this Act retains possession of any dwelling-house to which this Act applies shall, so long as he retains possession, observe and be entitled to the benefit of all the terms and conditions of the original contract of tenancy, so far as the same are consistent with the provisions of this Act, and shall be entitled to give up possession of the dwelling-house only on giving such notice as would have been required under the original contract of tenancy, or, if no notice would have been so required, on giving not less than three months' notice:

Provided that, notwithstanding anything in the contract of tenancy, a landlord who obtains an order or judgment for the recovery of possession of the dwelling-house or for the ejectment of a tenant retaining possession as aforesaid shall not be required to give any notice to quit to the tenant.

(2) Any tenant retaining possession as aforesaid shall not as a condition of giving up possession ask or receive the payment of any sum, or the giving of any other consideration, by

any person other than the landlord, and any person acting in contravention of this provision shall be liable on summary conviction to a fine not exceeding one hundred pounds, and the court by which he was convicted may order any such payment or the value of any such consideration to be paid to the person by whom the same was made or given, but any such order shall be in lieu of any other method of recovery prescribed by this Act.

(3) Where the interest of a tenant of a dwelling-house to which this Act applies is determined, either as the result of an order or judgment for possession or ejectment or for any other reason, any sub-tenant to whom the premises or any part thereof have been lawfully sublet shall, subject to the provisions of this Act, be deemed to become the tenant of the landlord on the same terms as he would have held from the tenant if the tenancy had continued.

[1923 Act, § 9 (2).]—9. (2) Where a tenant who by virtue of the principal Act retains possession of a dwelling-house to which that Act applies requires that furniture or other articles shall be purchased as a condition of giving up possession, the price demanded shall, at the request of the person on whom the demand is made, be stated in writing, and, if the price exceeds the reasonable price of the articles, the excess shall be treated as a sum asked to be paid as a condition of giving up possession, and the provisions of sub-section (2) of section fifteen of the principal Act (including penal provisions) shall apply accordingly.

This section was newly introduced by the 1920 Act.

For definition of "tenant," v. § 12 (1) (*f*) and (*g*); "tenancy," v. § 12 (1) (*g*); "landlord," v. § 12 (1) (*f*) and (*g*).

For dwelling-houses to which this Act applies, v. § 12 (2) and (9).

For criminal responsibility of landlords, v. §§ 3 (2), 8 (2), 10, 11, 14 (2), and 1923 (Notices of Increase) Act, § 2 (2).

For other criminal responsibility of tenants, v. 1923 Act, § 7 (2).

"The principal Act," *i.e.*, the 1920 Act.

The tenant of a dwelling-house to which this Act does, but the Acts repealed by this Act did not, apply is entitled to the protection of the provisions of this Act, unless he has been in fact ejected by the order of the Court before this Act came into operation—*Remon* v. *City*

Conditions of Statutory Tenancy—*continued.*

of London Real Property Co., Lim. [1921] 1 K. B. 49 and §§ 5 (3) and 19 (3) of the 1920 Act.

A landlord of a house to which this Act applies cannot recover peaceable possession of it in the exercise of his common law rights. If he attempt to do so, he will be liable to an action for trespass at the suit of his tenant, even though he subsequently obtains an order for possession from the Court, upon one of the grounds permitted by section § (1) (q.v.)—*Cruise* v. *Terrell* [1922] 1 K. B. 664.

In the absence of "outrageous conduct" or special damage, however, the tenant is entitled to recover no more than the actual amount of the damage that he has suffered by the temporary deprivation of possession —*Ibid.*

Where a tenant holds over, according to the general law on this subject, after his tenancy has determined, it is a question of fact what contract ought to be implied from the conduct of the parties. *Cf., e.g., Finlay* v. *Bristol and Exeter Railway Co.* [1852] 7 Ex. 409, *Towne* v. *Campbell* [1847] 3 C. B. 921, or *Wedd* v. *Porter and Others* [1916] 2 K. B. 91; and in the absence of evidence of a new contract the terms of the former tenancy continue—*Elgar* v. *Watson* [1842] Car. & M. 494.

Where, however, a tenant has held over since the Act, in respect of a house to which the Act applies, the landlord cannot (in the absence of any evidence other than his having allowed the tenant to retain possession and accepted rent) be presumed to have assented to the tenant's holding over, for he is restrained by the Legislature from recovering possession; and there is no material from which an implied agreement to continue the former tenancy on the former terms can be inferred—*Davies* v. *Bristow and Penrhos College, Ltd.* v. *Butler*, both reported in [1920] 3 K. B. 428, and *Town Properties Development Co.* v. *Winter* [1921] 37 T. L. R. 979.

The Act, however, provides that the tenant shall observe and be entitled to the benefit of the terms of the original tenancy, so far as they are consistent with this Act, and if he desires to terminate his tenancy, must give such notice as would have been required under the original contract of tenancy.

The liability of a landlord under the repairing covenants in a lease was considered by the Court of Appeal in a case where a tenant held over by virtue of the provisions of this Act—*Hewitt* v. *Rowlands* [1924] W. N. 196.

The measure of damages for non-repair is the difference in value to the tenant (during the period from the date of the request to repair to the assessment of damages) between the house in its unrepaired condition and the house in the condition in which it would have been if the landlord, on receipt of the request, had fulfilled his obligation. To this sum may be added damage to the tenant's furniture during such period if attributable to the landlord's default in repairing. *Ibid.*

The extent of the landlord's obligation to repair is measured having regard, *inter alia*, to the age and structure of the house. *Cf. Lister* v. *Lane* [1893] 2 Q. B. 212; *Lurcott* v. *Wakeley* [1911] 1 K. B. 905; *Anstruther-Gough-Calthorpe* v. *McOscar* [1924] 1 K. B. 716.

The fact that it is inconvenient or unprofitable to the landlord to repair is immaterial—*Hewitt* v. *Rowlands* [1924] W. N. 196.

A tenant retaining possession as a statutory tenant has no right to assign his statutory tenancy, either for valuable consideration or without consideration—*Keeves* v. *Dean* and *Nunn* v. *Pellegrini*, both reported in [1924] 1 K. B. 685.

For the effect of this section, where a tenant, whose agreement gives him an option to renew his lease, holds over in the exercise of his statutory right and seeks to exercise the option after the statutory tenancy has commenced, v. *McIlroy* (*William*), *Lim.* v. *Clements* [1923] W. N. 81.

Where a tenant gives up possession, but his sub-tenant refuses to do so, and the tenant has done all that he is able to do to eject him, the landlord cannot recover rent from the tenant in respect of the occupation by the sub-tenant—*Reynolds* v. *Bannerman* [1922] 1 K. B. 719.

Cf. further § 5 (5), *supra.*

MINOR AMENDMENTS OF LAW.

[1920 Act, § 16 (1).]—16. (1) Section three of the Poor Rate Assessment and Collection Act, 1869, shall, except so far as it relates to the metropolis, have effect as though for the limits of value specified in that section there were substituted limits twenty-five per cent. in excess of the limits so specified, and that section and section four of the same Act shall have effect accordingly.

This sub-section was newly introduced by the 1920 Act.

The Poor Rate Assessment and Collection Act, 1869 (32 & 33 Vict. c. 41), § 3, enacts that if the owner of "a hereditament is willing to enter into an agreement in writing with the overseers to become liable to them for the poor rates assessed in respect of such hereditament, for any term not less than one year from the date of such agreement, and to pay the poor rates whether the hereditament is occupied or not, the overseers may, subject nevertheless to the control of the vestry, agree with the owner to receive the rates from him, and to allow to him a commission not exceeding 25 per cent, on the amount thereof."

This provision is, however, limited to hereditaments the rateable value of which does not exceed, if situate in the metropolis, £20; in Liverpool, £13; in Manchester or Birmingham, £10; and elsewhere, £8.

And § 4 provides that the vestry of any parish may from time to time order that the owners of all rateable hereditaments to which § 3

Minor Amendments of Law—*continued.*

applies, situate within such parish, shall be rated to the poor rate in respect of such rateable hereditaments, instead of the occupiers, on all rates made after the date of such order. And then follow the abatements which may be allowed to the owners.

[**1920 Act, § 16 (2).**]—(2) It shall be deemed to be a condition of the tenancy of any dwelling-house to which this Act applies that the tenant shall afford to the landlord access thereto and all reasonable facilities for executing therein any repairs which the landlord is entitled to execute.

This sub-section was newly introduced by the 1920 Act.

For definition of "tenancy," v. § 12 (1) (*g*); "landlord," v. § 12 (1) (*f*) and (*g*); "tenant," v. 12 (1) (*f*) and (*g*).

For dwelling-houses to which this Act applies, v. § 12 (2) and (9).

[**1920 Act, § 16 (3).**]—(3) Where the landlord of any dwelling-house to which this Act applies has served a notice to quit on a tenant, the acceptance of rent by the landlord for a period not exceeding three months from the expiration of the notice to quit shall not be deemed to prejudice any right to possession of such premises, and, if any order for possession is made, any payment of rent so accepted shall be treated as mesne profits.

This sub-section was newly introduced by the 1920 Act.

For definition of "landlord," v. § 12 (1) (*f*) and (*g*); "tenant," v. § 12 (1) (*f*) and (*g*).

For dwelling-houses to which this Act applies, v. § 12 (2) and (9).

See, further, as to the position of landlord and tenant where the tenant retains possession by virtue of the Act, § 15 (1).

In *Shuter* v. *Hersh* [1922] 1 K. B. 438, the Court of Appeal decided that notices of increase of rent may be served from time to time, so far as authorised by this Act, if the tenant has once been made a statutory tenant, and that the service of a fresh notice to quit prior to the service of each notice of increase was unnecessary. In that case, at the time of the service of the notice of increase of rent, the validity of which was challenged, the landlord had continued to receive rent for a greater period than three months after the expiry of the notice to quit, and it was argued upon behalf of the tenant that a fresh tenancy between him and his landlord had been created. The Court of Appeal refused to accept that argument, and Bankes, L.J., thus dealt with the matter, at pp. 444 *et seq.*: "I cannot draw the inference of fact from the mere acceptance

of rent by the plaintiff . . . that any fresh tenancy between these parties was created. I accept the view expressed by Shearman, J., in *Davies* v. *Bristow*" (v. p. 86, *supra*) "as to the effect of giving notice to quit and subsequently the acceptance of rent under the Rent Restrictions Acts. . . . I think that the county court judge came to the conclusion at which he arrived entirely upon his construction of section 16 (3). That sub-section must in my opinion have been introduced because of the decision of *Hartell* v. *Blackler* [1920] 2 K. B. 161, but what was the intention of the Legislature in introducing it, is difficult to say. It may well be that it was introduced in order to encourage landlords to give tenants who were seeking to find other premises a further opportunity to find somewhere to go to, and in order to make it plain to landlords that by giving a reasonable time to their tenants they would not be prejudicing their position in reference to recovering possession. I do not know how that may be, but I am unable to draw the conclusion that the county court judge drew, . . . that if more than three months' rent has been accepted, there is then no valid notice to quit in existence."

The case of *Hartell* v. *Blackler* [1920] 2 K. B. 161, above referred to, had decided that the acceptance of rent by the landlord operated as a waiver of the notice to quit. That case was not followed in *Davies* v. *Bristow* [1920] 3 K. B. 428 (v. p. 86, *supra*), and cannot now be treated as good law.

A tenant may be made a statutory tenant either by the service of a notice to quit, or by the expiration of his tenancy at a time when he was entitled to claim the protection of the Increase of Rent, &c. Acts—v. further § 3 (1), *supra*.

Where a claim for possession is adjourned the acceptance of rent during the adjournment does not operate as a waiver of the notice to quit or create a new tenancy—*Sammon* v. *Cawley* [1919] 53 Ir. L. T. 224.

RULES AS TO PROCEDURE.

[**1920 Act, § 17 (1).**]—17. (1) The Lord Chancellor may make such rules and give such directions as he thinks fit for the purpose of giving effect to this Act, and may, by those rules or directions, provide for any proceedings for the purposes of this Act being conducted so far as desirable in private and for the remission of any fees.

[**1923 Act, § 11 (2).**]—11. (2) The Lord Chancellor may, by rules and directions made and given under section seventeen of the principal Act, provide for any question arising under or in connection with the principal Act or this Part of this Act being referred by consent of the parties interested for final deter-

Rules as to Procedure—*continued.*

mination by the judge or registrar of a county court sitting as an arbitrator or by an arbitrator appointed by such judge.

Cf. 1915 Act, § 3.

"The principal Act," *i.e.*, the 1920 Act.

In pursuance of his powers under these Acts, the Lord Chancellor has issued: 1. The Increase of Rent and Mortgage Interest (Restrictions) England, Rules, 1920, dated July 9, 1920 [S. R. & O. 1261, L. 37, 1920]; 2. The Increase of Rent and Mortgage Interest (Restrictions) Rules, 1921, dated June 3, 1921 [S. R. & O. 932, L. 12, 1921]; 3. The Rent (Restrictions) Rules, 1923, dated August 7, 1923 [S. R. & O. 901, L. 16, 1923]; 4. The Rent (Restrictions) Rules, 1924, dated August 6, 1924 [S. R. & O. 818, 1924]. In pursuance of his powers under the 1923 Act, § 18 (2) (v. p. 46, *supra*), the Minister of Agriculture and Fisheries has issued the Rent Restrictions (Fee) Regulation, 1924, dated February 19, 1924 [S. R. & O. 168, 1924]. These are reproduced in Appendix III. of this book.

In pursuance of their powers under § 18 (1) (*a*) the Court of Session, Scotland, has issued The Increase of Rent and Mortgage Interest (Restrictions), Scotland, Sheriff Court Procedure, Rules, 1920, by Act of Sederunt dated December 2, 1920 [S. R. & O. 2326, S. 115, 1920], and in pursuance of their powers under the 1920 and 1923 Acts, an Act of Sederunt dated December 14, 1923 [S. R. & O. 1528, 1923].

In pursuance of their powers under § 18 (2) (*g*) the Local Government Board for Ireland issued The Increase of Rent and Mortgage Interest (Restrictions), Ireland, Rules, 1920, dated August 6, 1920 [S. R. & O. 1597, 1920].

In pursuance of his powers under §§ 17 (1) and 18 (2) (*a*) the Lord Chancellor of Ireland issued The Increase of Rent and Mortgage Interest (Restrictions), Ireland, Rules, 1920, dated September 28, 1920 [S. R. & O. 1847, 1920].

In pursuance of their powers under the Increase of Rent and Mortgage Interest (Restrictions) (Irish Free State) Act, 1923, § 19, the Rules Committee have issued the Increase of Rent and Mortgage Interest (Restrictions) Rules, 1923, dated July 27, 1923.

A list of statutory rules and orders no longer in force, will be found in Appendix IV. of this book.

By a Treasury Order dated April 29, 1921 [S. R. & O. 795, L. 10, 1921], a new paragraph 26B has been added to the Treasury Order regulating court fees in county courts dated December 30, 1903 [S. R. & O. 1904, No. 122]. It reads as follows:—

"26B. For the extension of a warrant for recovery of possession under subsection (4) of section 5 of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, sixpence in the pound on the amount

of the rent upon which the poundage is calculated under paragraphs 33, 34, and 35 of this schedule."

And paragraph 33 is amended to read as follows:—

"33. In plaints for the recovery of tenements where the term has expired or been determined by notice, all poundage shall, subject as aforesaid, be calculated—

"(*a*) in the case of quarterly tenancies or tenancies less than quarterly, on the total amount of the three months' rent of the tenement;

"(*b*) in the case of other tenancies not exceeding six months on the total amount of the six months' rent of the tenement;

"(*c*) in all other cases, on the amount of the yearly rent of the tenement.

"Provided always that in each case the amount of the rent shall, for the purpose of this paragraph, be taken to be the amount stated in the præcipe on the entry of the plaint."

[1920 Act, § 17 (2).]—(2) A county court shall have jurisdiction to deal with any claim or other proceedings arising out of this Act or any of the provisions thereof, notwithstanding that by reason of the amount of claim or otherwise the case would not but for this provision be within the jurisdiction of a county court, and if a person takes proceedings under this Act in the High Court which he could have taken in the county court, he shall not be entitled to recover any costs.

This sub-section was newly introduced by the 1920 Act.

Where an action was brought in the county court to recover possession of a house within the 1915 Act and no order was made for recovery of possession nor as to costs, the costs were held to follow the event in accordance with the provisions of the County Courts Act, 1888 (51 & 52 Vict. c. 43), § 113, in default of any special direction by the judge. That section was held not to be affected by Rule 17 of the Increase of Rent and Mortgage Interest (War Restrictions) Rules, 1916, which provides for the determination of the costs in applications under that Act by an order of the county court judge—*Bensusan* v. *Bustard* [1920] 3 K. B. 654.

The county court judge should, however, make an order—*ibid.*

The same considerations appeared to apply under the 1920 Act and Rules. But about that there is now some doubt, for it has been held by the Court of Appeal, overruling McCardie, J., that where proceedings against a tenant are commenced for recovery of possession of a house to which the Acts apply, the proceedings "arise out of the Act" within this sub-section—*Russoff* v. *Lipovitch* [1925] 1 K. B. 628; *Gill* v. *Luck* [1923] W. N. 284.

Rules as to Procedure—*continued.*

Secus, if the defendant is not a tenant—*Gunter* v. *Davis* [1925] 1 K. B. 124.

Semble, the procedure under Ord. xiv. is inapplicable to claims for possession of houses to which the Acts apply—*Gill* v. *Luck* [1923] W. N. 284.

On the question of costs, however, it is to be observed that whereas the sub-section deals with "proceedings arising out of the Act," Rule 16 of the 1920 Rules deals with "applications under the Act." It might be that though a claim for possession is a proceeding arising out of the Act, it is not an application under the Act, and *Bensusan* v. *Bustard*, *supra*, might still be held to be good law.

A similar conflict of judicial opinion occurred in Scotland. *Whitelaw* v. *Gallagher* [1923] Scots L. T. (Sh. Ct. Rep.) 123 and *McArthur* v. *Coffield* [1923] Scots L. T. (Sh. Ct. Rep.) 130 may be cited as authorities for the proposition that an application for possession is "an application under the Act" within the meaning of the Act of Sederunt dated December 2, 1920 (S. R. & O. 2326, S. 115, 1920). Whereas in *Purves* v. *Graham* [1924] S. C. 477 the Court of Sessions took the opposite view.

It will be seen that the higher courts in England and Scotland have come to opposite views, unless one adopts the expedient of distinguishing "proceedings arising out of" from "applications under" the Act.

So, too, where an action is brought by a statutory tenant for an injunction to restrain his landlord from interfering with his possession and for damages for so doing, the proceedings are ones "arising out of the Act" within this sub-section, for the tenant is bound to plead the Act in order to found his right of action—*Wolff* v. *Smith* [1923] 2 Ch. 393. *Secus*, if the tenant were a contractual tenant.

Where a defence to an action of ejectment pleads this Act, in addition to the plea of possession, and the reply pleads the provisions and exceptions of this Act upon which the plaintiff relies, leave to deliver a special rejoinder will not be given—*O'Hara and Others* v. *Ireland* [1921] 55 Ir. L. T. 119.

By the Administration of Justice Act, 1920 (10 & 11 Geo. 5. c. 81), § 3 (2), "Notwithstanding anything in any Act, it shall not be lawful for any party in a county court or any other inferior court of civil jurisdiction to require any action or other matter arising under the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, to be tried with a jury."

APPLICATION TO SCOTLAND AND IRELAND.

[**1920 Act, § 18 (1).**]—18. (1) This Act shall apply to Scotland, subject to the following modifications:—

(*a*) "Mortgage" and "encumbrance" mean a heritable

security including a security constituted by absolute disposition qualified by back bond or letter; "mortgagor" and "mortgagee" mean respectively the debtor and the creditor in a heritable security; "covenant" means obligation; "mortgaged property" means the heritable subject or subjects included in a heritable security; "rateable value" means yearly value according to the valuation roll; "rateable value on the third day of August nineteen hundred and fourteen" means yearly value according to the valuation roll for the year ending fifteenth day of May nineteen hundred and fifteen; "assessed" means entered in the valuation roll; "land" means lands and heritages; "rates" means assessments as defined in the House Letting and Rating (Scotland) Act, 1911[1]; "Lord Chancellor" and "High Court" mean the Court of Session; "rules" means act of sederunt; "county court" means the sheriff court; "sanitary authority" means the local authority under the Public Health (Scotland) Act, 1897; "mesne profits" means profits; the Board of Agriculture for Scotland shall be substituted for the Minister of Agriculture and Fisheries; the twenty-eighth day of May shall be substituted for the twenty-fourth day of June; the reference to the county agricultural committee shall be construed as a reference to the body of persons constituted with respect to any area by the Board of Agriculture for Scotland under sub-section (2) of section eleven of the Corn Production Act, 1917[2]; references to levying distress shall be construed as references to doing diligence; the reference to the President of the Surveyors' Institution shall be construed as a reference to the Chairman of the Scottish Committee of the Surveyor's Institution; a reference to section five of the Housing, Town Planning, &c. (Scotland) Act, 1919,[3] shall be substituted for a reference to section seven of the Housing, Town Planning, &c. Act, 1919; and a reference to section one of the House Letting and Rating (Scotland) Act, 1911,[4] shall be substituted for

Application to Scotland and Ireland—*continued.*

a reference to section three of the Poor Rate Assessment and Collection Act, 1869:

(*b*) Nothing in paragraph (*b*) of sub-section (1) of the section of this Act relating to permitted increases in rent [5] shall permit any increase in rent in respect of any increase after the year ending Whitsunday nineteen hundred and twenty in the amount of the rates payable by the landlord other than rates for which he is responsible under the House Letting and Rating (Scotland) Act, 1911:

(*c*) Paragraph (*d*) of sub-section (1) of the section of this Act relating to application and interpretation [6] shall not apply:

(*d*) Where any dwelling-house, to which the Acts repealed by this Act applied, is subject to a right of tenancy arising from a yearly contract or from tacit relocation, and ending at Whitsunday nineteen hundred and twenty-one, the year ending at the said term of Whitsunday shall be deemed to be a period during which, but for this Act, the landlord would be entitled to obtain possession of such dwelling-house.[7]

[**1923 Act, § 19.**]—19. *Application to Scotland.*—This Act shall apply to Scotland subject to the following modifications:—

(*a*) The twenty-eighth day of May shall be substituted for the twenty-fourth day of June; the Scottish Board of Health shall be substituted for the Minister of Health; references to the registrar of a county court shall not apply; and "exciseable liquor" shall be substituted for "intoxicating liquor";

(*b*) For removing doubts, it is hereby declared that nothing in the principal Act affects the operation of the House Letting and Rating (Scotland) Act, 1920, and the reference in sub-section (2) of section one of the last-mentioned Act to the provisions of Acts repealed by the

principal Act shall be construed as a reference to the provisions of section three of the principal Act.[8]

Cf. 1915 Act, § 4 (1); 1919 Act, § 9; and 1919 (No. 2) Act, § 1 (6).

Note further, that whereas the 1920 Act and the Acts amending the same have been extended as to England until December 25, 1927, they have been extended as to Scotland until May 28, 1928. 1925 Act, § 1 (1), and 1 (3) (*d*).

[1] The expression "assessment" by the House Letting and Rating (Scotland) Act, 1911 (1 & 2 Geo. 5. c. 53), § 1, includes "all rates, charges, and assessments imposed, assessed, or levied by an assessing authority, the proceeds of which are applicable to public local purposes and which are leviable in respect of the yearly value of lands and heritages, and includes any sum which, though obtained in the first instance by a precept, certificate, or other instrument requiring payment from some authority or officer, is or can be ultimately raised out of an assessment."

[2] By the Corn Production Act, 1917 (7 & 8 Geo. 5. c. 46), § 11 (2), "The Board" (*i.e.*, in this connection, the Board of Agriculture for Scotland) "may, with respect to any area consisting of one or more counties or county boroughs, authorise any body of persons constituted in the prescribed manner, to exercise on behalf of the Board, subject to such appeal to the Board as may be prescribed, any of the powers of the Board under this Part of this Act, and may if they think fit prescribe the procedure and the method of authentication of any notice or other instrument issued by any such body."

[3] The Housing, Town Planning, &c. (Scotland) Act, 1919 (9 & 10 Geo. 5. c. 60), § 5, provided for recouping losses on housing schemes.

This section is repealed by the Housing, &c. Act, 1923 (13 & 14 Geo. 5. c. 24), § 24 and Schedule III., subject to saving for existing liabilities—*ibid.*, §§ 6 (1) and 23 (2).

[4] The House Letting and Rating (Scotland) Act, 1911 (1 & 2 Geo. 5. c. 53), by § 1, applies to dwelling-houses in a burgh or special district in which that Act is in operation, "entered in the valuation roll at a yearly rent or value of—

"Ten pounds or under if the population of the burgh or special district is less than twenty thousand;

"Fifteen pounds or under if the population of the burgh or special district is twenty thousand and less than fifty thousand; and

"Twenty-one pounds or under if the population of the burgh or special district is fifty thousand or upwards."

[5] "The section of this Act relating to permitted increases in rent," *i.e.*, § 2. See also the House Letting and Rating (Scotland) Act, 1920 (10 Geo. 5. c. 8), § 1 (1).

[6] "The section of this Act relating to application and interpretation," *i.e.*, § 12.

Application to Scotland and Ireland—*continued.*

[7] As to the meaning of § 18 (1) (*d*), v. *Molloy and Another* v. *Thomson* [1923] Scots L. T. (Sh. Ct. Rep.) 95; and *Glass* v. *Crombie* [1924] Scots L. T. (Sh. Ct. Rep.) 6.

Where a tenant was served with a notice of increase of rent but no notice to quit, the former notice was held effective until Whit Sunday, 1921, by virtue of § 18 (1) (*d*), but after that date it was held to cease to be valid and operative, unless in the meantime the landlord had served a notice to quit.—*Ibid.*

Now, however, by the 1923 (Notices of Increase) Act, § 1 (1), a notice of increase is deemed to be also a notice to quit.

[8] The provisions of the 1915 and 1919 Acts requiring notice of increase of rent did not apply to the increases of rent authorised by the House Letting and Rating (Scotland) Act, 1920 (10 Geo. 5. c. 8) - -v. § 1 (2) of that Act; and by the 1923 Act, § 19 (*b*), the reference in the House Letting and Rating (Scotland) Act, 1920, § 1 (2), to the Acts of 1915 and 1919 shall be construed as a reference to the 1920 Act, § 3.

In an action for possession of a dwelling-house to which this Act applies, if the tenant is retaining possession by virtue of this Act, a return to the Burgh Assessor for a future year for the purpose of rating, in which the present tenant is represented as tenant of the house, does not estop the landlord from recovering possession if he can at any time bring himself within § 5 (1) of the 1920 Act as amended—*Purves* v. *Graham* [1924] Scots L. T. (Sh. Ct. Rep.) 20.

By the Housing, Town Planning, &c. (Scotland) Act, 1919 (9 & 10 Geo. 5. c. 60), § 29, as amended by the Housing, &c. Act, 1923 (13 & 14 Geo. 5. c. 24), § 16 and Sched. II., "Nothing in the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, or in the enactments amending that Act, shall be deemed to affect the provisions of section seventeen of the Housing, Town Planning, &c. Act, 1909, or to prevent a local authority from obtaining possession of any house the possession of which is required by them for the purpose of exercising their powers under the Housing Acts, or under any scheme made under those Acts."

As to Rules issued by the Court of Session, Scotland, under § 18 (1) (*a*), v. p. 90, *supra.*

[**1920 Act, § 18 (2).**]—(2) *This Act shall apply to Ireland subject to the following modifications:—*

(*a*) *A reference to the Lord Chancellor of Ireland shall be substituted for the reference to the Lord Chancellor:*

(*b*) *A reference to section fifteen of the Summary Jurisdiction (Ireland) Act,* 1851, *shall be substituted for the*

reference to section one of the Small Tenements Recovery Act, 1838:

(*c*) *The expression "mortgage" includes a charge by registered disposition under the Local Registration of Title (Ireland) Act*, 1891, *and any notice of the apportionment of the principal money secured by a mortgage, if and when the notice becomes operative under this Act, and the award of any arbitrator with reference to any such apportionment may be registered under the enactments relative to the registration of deeds or titles as the case requires:*

(*d*) *The expression "rateable value" means the annual rateable value under the Irish Valuation Acts: Provided that, where part of a house let as a separate dwelling is not separately valued under those Acts, the Commissioner of Valuation and Boundary Surveyor may, on the application of the landlord or tenant, make such apportionment of the rateable value of the whole house as seems just, and his decision as to the amount to be apportioned to the part of the house shall be final and conclusive, and that amount shall be taken to be the rateable value of the part of the house for the purposes of this Act but not further or otherwise:*

(*e*) *The following paragraph shall be substituted for paragraph (ii) of sub-section* (1) *of section five of this Act:*

(ii) Where the court is satisfied that the dwelling-house is required by the landlord for the occupation of a person engaged on work necessary for the proper working of an agricultural holding:

(*f*) *The following sub-section shall be substituted for sub-section* (9) *of section twelve of this Act:*

(9) *This Act shall not apply to a dwelling-house erected after, or in course of erection on, the second day of April nineteen hundred and nineteen, or to any dwelling-house which has been since that date or was at that date being bonâ fide reconstructed by way of conversion into two or more separate and self-*

Application to Scotland and Ireland—*continued.*

contained flats or tenements; but the rateable value of any such dwelling-house to which this Act would have applied if it had been erected or so reconstructed before the said date shall be ascertained as though the rent for the purposes of section eleven of the Valuation (Ireland) Act, 1852, *were the rent for which a similar dwelling-house might have been reasonably expected to let on the third day of August nineteen hundred and fourteen, the probable average annual cost of repairs, insurance, and other expenses (if any) necessary to maintain the dwelling-house in its actual state, and all rates, taxes, and public charges, if any (except tithe rentcharge), being paid by the tenant:*

(*g*) *The medical officer of health of a dispensary district shall be substituted for the sanitary authority in section two of this Act and in the First Schedule thereto, and the issue of certificates and the payment of fees in connection with applications by tenants under the said section shall be subject to regulations to be made by the Local Government Board for Ireland:*

(*h*) *This Act shall not apply to any dwelling-house provided by a local authority under the Labourers (Ireland) Acts,* 1883 *to* 1919, *or under any of those Acts.*

Cf. 1915 Act, § 4 (2); 1919 Act, § 10.

The 1923 Act does not apply to Ireland—v. 1923 Act, § 20.

The Parliament of Northern Ireland extended the 1920 Act until December 24, 1923, by the Increase of Rent and Mortgage Interest Restrictions (Continuance) Act (Northern Ireland), 1923 (13 & 14 Geo. 5. c. 16), and the 1920 Act, as amended, has been further extended by them until December 31, 1924, by the Expiring Laws Continuance Act (Northern Ireland), 1923 (13 & 14 Geo. 5. c. 25), § 1 and Sched., and again until December 31, 1925, by the Expiring Laws Continuance Act (Northern Ireland), 1924 (14 & 15 Geo. 5. c. 23), § 1 and Sched.

The Oireachtas of the Saorstát Eireann passed the Increase of Rent and Mortgage Interest (Restrictions) Act, 1923 (No. 19 of 1923), on June 22, 1923.

The Housing of the Working Classes Act, 1890 (53 & 54 Vict. c. 70),

§ 75, enacts: "In any contract made after" August 14, 1885, "for letting for habitation by persons of the working classes a house or part of a house, there shall be implied a condition that the house is at the commencement of the holding in all respects reasonably fit for human habitation." And "letting for habitation by persons of the working classes" means "the letting for habitation of a house or part of a house at a rent not exceeding . . . in Ireland £4."

The Summary Jurisdiction (Ireland) Act, 1851 (14 & 15 Vict. c. 92), § 15, makes provision for possession of small tenements being recovered by order of justices, and prescribes the manner of service of the summons, and the nature of the order that may be made.

As to rules issued by the Lord Chancellor of Ireland under § 18 (2) (*a*) and the Local Government Board for Ireland under § 18 (2) (*g*), v. p. 90, *supra*.

The following cases, decided under the Irish Free State Act of 1923, may be referred to:—*Johnston and Another* v. *Michael O'Donnell* [1924] 58 Ir. L. T. 95 and *Murray* v. *Webb* [1925] 59 Ir. L. T. 41 (irrecoverability of overpaid rent); *O'Neill* v. *Bryce* [1924] 58 Ir. L. T. 115 (recovery of rates paid by tenant); *Bolger* v. *Daly* [1925] 2 Ir. R. 42 (onus of proving that Act applies to houses; what is *primâ facie* proof of standard rent); *Topping* v. *Hughes* [1924] 58 Ir. L. T. 156 (alternative accommodation).

SHORT TITLE, DURATION AND REPEAL.

[**1920 Act,** § **19.**]—19. (1) This Act may be cited as the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

(2) Except as otherwise provided,[1] this Act shall continue in force until the twenty-fourth day of June nineteen hundred and twenty-three:

Provided that the expiration of this Act or any part thereof shall not render recoverabe by a landlord any rent, interest or other sum which during the continuance thereof was irrecoverable, or affect the right of a tenant to recover any sum which during the continuance thereof was under this Act recoverable by him.

(3) The enactments mentioned in the Second Schedule to this Act are hereby repealed to the extent specified in the third column of that schedule:

Provided that, without prejudice to the operation of section thirty-eight of the Interpretation Act, 1889, nothing in this repeal shall render recoverable any sums which at the time of

Short Title, Duration and Repeal—*continued.*

the passing of this Act were irrecoverable, or affect the validity of any order of a court, or any rules or directions made or given under any enactment repealed by this Act, all of which orders, rules, and directions if in force at the date of the passing of this Act shall have effect as if they were made or given under this Act, and any proceedings pending in any court at the date of the passing of this Act, under any enactment repealed by this Act, shall be deemed to have been commenced under this Act.

Cf. 1915 Act, § 5 (2).

[1] "Except as otherwise provided," *i.e.*, the application of the Act to business premises, in which case it expired on June 24, 1921, v. § 13 (3).

In the application of this Act to Scotland, for "June 24" read "May 28"—v. § 18 (1) (*a*).

By the 1923 Act, § 1, the operation of the 1920 Act, as amended, was continued until June 24, 1925, and by the 1925 Act, § 1 (1), until December 25, 1927, in England, and May 28, 1928, in Scotland. By § 2 of the 1925 Act, the 1920 Act, and the Acts amending the same, may be cited together as the Rent and Mortgage Interest (Restrictions) Acts, 1920 to 1925. The 1923 (Notices of Increase) Act, the 1923 Act, and subsequent Acts do not apply to Ireland, but in other respects are to be construed as one with the 1920 Act. *Cf.* 1923 (Notices of Increase) Act, § 4, 1923 Act, § 20, 1924 Act, § 3.

The Interpretation Act, 1889 (52 & 53 Vict. c. 63), § 38, enacts:—

"(1) Where this Act or any Act passed after" January 1, 1890, "repeals and re-enacts, with or without modification, any provisions of a former Act, references in any other Act to the provisions so repealed, shall, unless the contrary intention appears, be construed as references to the provisions so re-enacted.

"(2) Where this Act or any Act passed after" January 1, 1890, "repeals any other enactment, then, unless the contrary intention appears, the repeal shall not—

"(*a*) revive anything not in force or existing at the time at which the repeal takes effect; or

"(*b*) affect the previous operation of any enactment so repealed or anything duly done or suffered under any enactment so repealed; or

"(*c*) affect any right, privilege, obligation, or liability acquired, accrued, or incurred under any enactment so repealed; or

"(*d*) affect any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment so repealed; or

"(*e*) affect any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

"and any such investigation, legal proceeding, or remedy may be instituted, continued, or enforced, and any such penalty, forfeiture, or punishment may be imposed, as if the repealing Act had not been passed."

Proceedings pending "in any Court" include the Divisional Court or the Court of Appeal—*Benabo* v. *Horseley* [1920] 36 T. L. R. 859.

SCHEDULES.

FIRST SCHEDULE.

Form of Notice by Landlord.

Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

To Date

Address of premises to which this notice refers - - }

Take notice that I intend to increase the rent of *l. s. d.* per at present payable by you as tenant of the above-named premises by the amount of *l. s. d.* per

The increase is made up as follows:

(*a*) *l. s. d.* under paragraph (*a*) of sub-section (1) of section two of the Act, being six [eight] per cent. on *l. s. d.* expended by me since [*insert date*] on improvements and structural alterations, and consisting of*

(*b*) *l. s. d.* under paragraph (*b*) of sub-section (1) of section two of the Act, on account of an increase in the rates payable by me from *l. s. d.* per to *l. s. d.* per in respect of the premises.

(*c*) *l. s. d.* under paragraph (*c*) of sub-section (1) of section two of the Act, being per cent. on the net rent of the premises. The net rent is *l. s. d.* The standard rent is *l. s. d.*

(*d*) *l. s. d.* under paragraph (*d*) of sub-section (1) of section two of the Act, being per cent. on the net rent of the premises. The net rent is *l. s. d.* The standard rent is *l. s. d.*

The increase under head (*b*) will date from , being one clear week from the date of service of this notice,[1] and the remaining

First Schedule—*continued.*

increases from , being four clear weeks from the date of service of this notice.[1]

† The increase under head (*d*) is on account of my responsibility for repairs, for no part [part only] of which are you under any express liability.

‡ At any time or times, not being less than three months after the day of , 19 , you are entitled to apply to the county court for an order suspending the increases under heads (*c*) and (*d*) above if you consider that the premises are not in all respects reasonably fit for human habitation or otherwise not in a reasonable state of repair. You will be required to satisfy the county court by a report of the sanitary authority of otherwise, that your application is well founded, and for this purpose you are entitled to apply to the sanitary authority for a certificate. A fee of one shilling is chargeable on any application for a certificate, but, if the certificate is granted you can deduct this sum from your rent. The address of the sanitary authority is

Signed

Address

* Here state improvements and alterations affected.

† Where the tenant is under an express liability for part of the repairs, the increase under head (*d*) is to be settled in default of agreement by the county court.

‡ This paragraph need not be included if there is no increase under head (*d*).

SECOND SCHEDULE.

Enactments Repealed.

Session and Chapter.	Short Title.	Extent of Repeal.
5 & 6 Geo. 5. c. 97.	The Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915.	The whole Act.
7 & 8 Geo. 5. c. 25.	The Courts (Emergency Powers) Act, 1917.	Ss. 4, 5 and 7.
8 & 9 Geo. 5. c. 7.	The Increase of Rent and Mortgage Interest (Restrictions) Act, 1919.	The whole Act.
9 & 10 Geo. 5. c. 90.	The Increase of Rent, &c. (Amendment) Act, 1919.	The whole Act.

[1] Amended by 1923 Act, § 6 (2).

RENT RESTRICTIONS (NOTICES OF INCREASE) ACT, 1923.

(13 & 14 Geo. 5, Ch. 13.)

An Act to amend the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, with respect to the effect of notice to increase rent given thereunder; and for purposes consequential thereon. [7th June, 1923.]

Be it enacted, etc.:—

EFFECT OF NOTICES TO INCREASE RENT UNDER PRINCIPAL ACT.

[**1923 (Notices of Increase) Act, § 1.**]—1. (1) Where notice of intention to increase rent has, whether before or after the passing of this Act, been served on a tenant in conformity with sub-section (2) of section three of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920 (hereinafter referred to as the principal Act) and a notice to terminate the tenancy was necessary in order to make such increase effective, the notice of intention to increase the rent shall have effect and shall be deemed always to have had effect as if it were or had been also a notice to terminate the existing tenancy on the day immediately preceding the day as from which the increase is or was first to take effect, or on the earliest day thereafter on which if it had been a notice to terminate the tenancy, it would have been effective for that purpose, and in the latter case a notice of increase served before the passing of this Act shall be deemed to have had effect as if such earliest date had been specified in the notice as the date as from which the increase was to take effect.

Provided that—

(*a*) nothing in this Act shall entitle a landlord after the passing of this Act to recover from a tenant, in respect

Effect of Notices to Increase Rent, &c.—*continued.*

of any period before the first day of December, nineteen hundred and twenty-two, the increase of rent made valid by this Act, or any sums which have been recovered from the landlord before that date by means of deductions from rent or otherwise, or any rent due before that date which has not been paid by reason of such deductions having been made therefrom; but section fourteen, sub-section (1), of the principal Act shall not apply to an increase of rent made valid by this Act which was paid by, or recovered from, a tenant prior to the first day of December, nineteen hundred and twenty-two;

(*b*) nothing in this Act shall affect the right to enforce any judgment of a court of competent jurisdiction given before the fifteenth day of February, nineteen hundred and twenty-three, or render recoverable any sum paid under such a judgment.

(2) Any increase of rent made valid by this Act is hereinafter referred to as a validated increase of rent.

For definition of "tenant," v. § 12 (1) (*f*) and (*g*)*; "landlord," v. § 12 (1) (*f*) and (*g*); "tenancy," v. § 12 (1) (*g*).

"The passing of this" (Notices of Increase) "Act," *i.e.*, June 7, 1923.

For requirements as to service of notice of increase, v. § 3 (2).

For form of notice of increase, v. First Schedule.

"The principal Act," *i.e.*, the 1920 Act.

The effect of this provision may be to some extent explained by reference to the example given in dealing with the requirements of the 1920 Act, § 3 (1)—v. p. 29, *supra.*

It was there pointed out that the landlord of a house (to which the Acts applied and let on a yearly tenancy ending in September), who was desirous of raising the rent of his tenant at the earliest opportunity, would be unable to do so until September, 1921.

Suppose that he served a valid notice of increase of rent as soon as the 1920 Act was passed and expiring on August 1, 1920, but served no notice to quit. By the provisions of this section that notice is treated as if it were also a notice to quit, expiring as early as a valid notice to quit then served could have expired, *i.e.*, in September, 1921.

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* References to sections without qualification refer to sections of the 1920 Act.

The increase of rent, therefore, demanded by the landlord becomes as from September, 1921, a validated increase of rent.

If the tenant has already paid it, he cannot take advantage of § 14 (1) of the 1920 Act and reclaim it.

If he has not already paid it, he is liable for it as arrears of rent, but only—because of the terms of proviso (*a*)—so much of the increase as is payable in respect of a period commencing on or after December 1, 1922.

This Act is retrospective and, although not passed until after the hearing in the Court of first instance, is appliable to an appeal heard after its passage—*Landrigan* v. *Simons* [1924] 1 K. B. 509. *Cf.* also *Stovin* v. *Fairbrass* [1919] W. N. 216, *per* Bankes, L.J., at p. 217.

The Act validates increases of rent, although no notice to quit was given by making the notice of increase take effect as if it was also a notice to quit—*Landrigan* v. *Simons*, *supra*.

Everything done up to December 1, 1922, is to remain undisturbed, and the position as on that date is to be accepted.—*Ibid.*

A valid notice of increase is hereby rendered equivalent to a notice to quit for all purposes. A landlord may recover possession, therefore, upon proof of the service of such a notice upon his tenant, although no other notice to quit has been given by him—*Aston* v. *Smith* [1924] 2 K. B. 143.

PAYMENT OF ARREARS BY INSTALMENTS.

[**1923 (Notices of Increase) Act,** § 2.]—2. (1) The amount due under this Act on account of any arrears of rent, that is to say,—

(*a*) any validated increase of rent in respect of the period from the first day of December, nineteen hundred and twenty-two, to the date of the passing of this Act, both inclusive; and

(*b*) any sum which during the said period has been recovered by the tenant from the landlord by deductions from rent or otherwise, and which would not have been so recoverable had this Act been then in force;

shall be payable by instalments with and as part of the periodical payments of rent, each instalment being fifteen per cent. of the standard rent for the week, month, or other period for which the rent is payable, fractions of a penny being disregarded; and such instalments shall continue payable until the whole of the amount of such arrears is paid off:

Payment of Arrears by Instalments—*continued.*

Provided that—

(i) the tenant may at any time pay to the landlord the full amount of such arrears subject to the deduction of the aggregate amount of the instalments (if any) already paid; and

(ii) if a tenant by whom any such instalments are payable gives up possession of the premises either voluntarily or on any order or judgment of a court, the balance of the sum payable by instalments shall immediately become due and recoverable.

(2) A landlord claiming that a sum on account of arrears of rent is due to him under this Act shall serve on the tenant a notice to that effect, and the notice shall specify the amount so claimed and the amount of the instalments claimed to be payable, and the first instalment shall not be payable until after the expiration of one clear week from the date of the notice. If such notice contains any statement or representation which is false or misleading in any material respect, the landlord shall be liable on summary conviction to a fine not exceeding ten pounds unless he proves that the statement was made innocently and without intent to deceive.

(3) The notice shall be in the form contained in the Schedule to this Act, or in a form substantially to the same effect, and the landlord shall furnish the tenant with details in writing showing how the amount claimed is arrived at, and how the amount of the instalments has been calculated.

(4) Any question as to the amount of arrears due from a tenant, or the amount of any instalment, shall be determined on the application either of the landlord or the tenant by the county court, and the decision of the court shall be final and conclusive.

For definition of "tenant," v. § 12 (1) (*f*) and (*g*); "landlord," v. § 12 (1) (*f*) and (*g*); "validated increase of rent," v. § 1 (2) of the 1923 (Notices of Increase) Act; "standard rent," v. § 12 (1) (*a*).

"The passing of this" (Notices of Increase) "Act," *i.e.*, June 7, 1923.

For other criminal responsibility of landlord, v. §§ 3 (2), 8 (2), 10, 11 and 14 (2).

For criminal responsibility of tenants, v. § 15 (2), and 1923 Act, § 7 (2).

POWER TO SUSPEND LIABILITY IF PREMISES UNFIT FOR HUMAN HABITATION OR IN STATE OF DISREPAIR.

[**1923 (Notices of Increase) Act, § 3.**]—3. (1) A tenant, who becomes by virtue of this Act liable to pay any sum by way of rent or on account of arrears, or the sanitary authority, may apply to the county court for an order suspending such liability on the ground that the house is not in all respects reasonably fit for human habitation or that it is otherwise not in a reasonable state of repair, and section two of the principal Act shall apply as if the application had been made under sub-section (2) of that section.

(2) Where the liability in respect of the payment of instalments is so suspended, the instalments which would have become payable during the period of suspension, shall, for the purpose of calculating the aggregate amount of instalments paid, be deemed to have been paid.

(3) Where a tenant has obtained from the sanitary authority a certificate that the house is not in a reasonable state of repair, and has served a copy of the certificate upon the landlord, it shall be a good defence to any claim against the tenant for the payment of any sum which the tenant is by virtue of this Act liable to pay by way of rent or on account of arrears in respect of any subsequent rental period that the house was not in a reasonable state of repair during that period, and in any proceedings against the tenant for the enforcement of such claim (including proceedings for recovery of possession or ejectment on the ground of non-payment of rent so far as the rent unpaid includes any such sum), the production of the said certificate shall be sufficient evidence that the house was and continues to be in the condition therein mentioned unless the contrary is proved:

Premises Unfit for Human Habitation—*continued.*

Provided that the foregoing provision shall not apply in any case where and so far as the condition of the house is due to the tenant's neglect or default or breach of express agreement.

(4) For the purposes of this Act, a certificate of a sanitary authority shall specify what works (if any) require to be executed in order to put the house into a reasonable state of repair.

(5) An instrument purporting to be a certificate of a sanitary authority and to be signed by an officer of the authority shall, without further proof, be taken to be a certificate of the authority unless the contrary is proved.

(6) A sanitary authority may appoint a committee for the purposes of this Act and may delegate, with or without restrictions, to such committee or to an existing committee of the authority all or any of the powers of the authority under this Act.

For definition of "tenant," v. § 12 (1) (*f*) and (*g*); "landlord," v. § 12 (1) (*f*) and (*g*).

"After the passing of this" (Notices of Increase) "Act," *i.e.*, June 7, 1923.

"The principal Act," *i.e.*, the 1920 Act.

SHORT TITLE AND CONSTRUCTION.

[**1923 (Notices of Increase) Act, § 4.**]—4. This Act may be cited as the Rent Restrictions (Notices of Increase) Act, 1923, and shall be construed as one with the principal Act, except that this Act shall not extend to Ireland.

"The principal Act," *i.e.*, the 1920 Act.

SCHEDULE.

Form of Notice by Landlord.

Rent Restrictions (Notices of Increase) Act, 1923.

Date.

To

Address of premises to which this notice refers - - }

Take Notice that I claim that the sum of is due to me from you as tenant of the above premises on account of arrears of rent under the above-mentioned Act.

The amount due on account of such arrears is payable by instalments with, and as part of, your weekly [*monthly, or other periodical*] rent until the amount of such arrears is paid off. The first instalment will be payable on the day of *.

The amount of the instalments claimed by me is a week [*month, or other period, as the case may be*].

If you wish to dispute the amount of the sum claimed or of the instalments, you are entitled to apply to the county court of .

You are entitled to apply to the county court for an order suspending any sum due from you by way of rent, or on account of arrears, under the above-mentioned Act, if you consider that the premises are not in all respects reasonably fit for human habitation or otherwise not in a reasonable state of repair. You will be required to satisfy the county court, by a report of the sanitary authority or otherwise, that your application is well founded, and for this purpose you are entitled to apply to the sanitary authority for a certificate. A fee of one shilling is chargeable, but, if the certificate is granted, you can deduct this sum from the sum due from you as aforesaid. The address of the sanitary authority is .

If at any time you give up possession of the above premises, either voluntarily or on an order or judgment of the court, the balance of the sum payable by instalments will immediately become due.

A statement is sent herewith showing how the amount of the above claim is arrived at, and how the amount of the instalments has been calculated.

Signed

Address

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* The date to be inserted will be the first rent day after the expiration of one clear week from the date of the notice.

RENT AND MORTGAGE INTEREST RESTRICTIONS ACT, 1923.

[13 & 14 Geo. 5. c. 32.]

PART II.

RESTRICTIONS AFTER EXPIRY OF PRINCIPAL ACT.

RESTRICTION ON RIGHT TO POSSESSION IN CERTAIN CASES AFTER THE EXPIRY OF THE PRINCIPAL ACT.

[**1923 Act,** § **12.**]—12. (1) If proceedings are taken against the person who on the twenty-fourth day of June, nineteen hundred and twenty-five,[1] is tenant of a dwelling-house to which the principal Act then applies (hereinafter referred to as the "sitting tenant") for the recovery of possession of the dwelling-house or for the ejectment of the tenant therefrom at any time after that day, should it appear to the court that the proceedings are harsh or oppressive or that exceptional hardship would be caused to the sitting tenant by the making or giving of an order or judgment for possession or ejectment, the court may refuse to make or give such an order or judgment or may adjourn the application for or stay or suspend execution of any such order or judgment or postpone the date of possession for such period or periods, and subject to such conditions as it thinks proper, and, if such conditions are complied with, the court may, if it thinks fit, discharge or rescind any such order or judgment.

For definition of "tenant," v. § 12 (1) (*f*) and (*g*). *

For dwelling-houses to which the principal Act applies, v. § 12 (2) and (9).

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* References to sections without qualification refer to sections of the 1920 Act.

[1] For this date December 25, 1927, has been substituted by the 1925 Act, § 1 (3) (*d*). This part of the 1923 Act, therefore, only affects the position after December 25, 1927.

(2) For the purpose of the exercise of its jurisdiction under this section, the court may direct that the tenancy of the sitting tenant shall be treated as a subsisting tenancy notwithstanding the determination of the same by any notice to quit or similar notice or otherwise and may set aside and annul any such notice accordingly, and shall have power to determine what increase of rent (if any) is fair and reasonable, regard being had to the character and condition of the dwelling-house and the rents of similar dwelling-houses in the locality.

(3) The court shall not exercise any of the powers given to it under the foregoing provisions of this section in any case where it is satisfied that greater hardship would be caused to the landlord by the exercise of the power than would be caused to the tenant by the refusal to exercise it.

For definition of "tenancy," v. § 12 (1) (*g*); "sitting tenant," v. § 12 (1) of the 1923 Act; "tenant," v. § 12 (1) (*f*) and (*g*).

(4) In any proceedings an order or judgment for possession or ejectment against the sitting tenant of the dwelling-house shall not, unless the court otherwise directs, be operative against a sitting tenant of a part of the dwelling-house which, on the twenty-fourth day of June, nineteen hundred and twenty-five, is lawfully sub-let to him and is a separate dwelling-house to which the principal Act applies, and the court shall, in relation to that part of the dwelling-house and the sitting tenant thereof, have all the like powers and jurisdiction as it has in relation to the whole dwelling-house and the sitting tenant thereof.

For definition of "sitting tenant," v. § 12 (1) of the 1923 Act; "tenant," v. § 12 (1) (*f*) and (*g*).

For dwelling-houses to which the principal Act applies, v. § 12 (2) and (9).

(5) In order to assist the court in the determination of questions arising under this Part of this Act in relation to the

Restrictions after Expiry of Act—*continued.*

rent, character or condition of dwelling-houses, the Minister of Health may establish reference committees to whom such questions may be referred by the court for consideration and report.

(6) The foregoing provisions of this section shall not apply to proceedings against a sitting tenant under the Small Tenement Recovery Act, 1838, and any such proceedings shall, on the application of the sitting tenant, be discontinued, subject to any provision that may be made by rules under this Part of this Act for transfer to the county court.

For definition of "sitting tenant," v. § 12 (1) of the 1923 Act; "tenant," v. § 12 (1) (*f*) and (*g*).

"This part of this Act," *i.e.*, Part II. of the 1923 Act.

REDUCTION OF RENT PENDING THE EXECUTION OF REPAIRS.

[**1923 Act, § 13.**]—13. (1) If the county court on the application of a sitting tenant is satisfied by the production of a certificate of the sanitary authority and such further evidence (if any) as may be adduced that the dwelling-house is not in a reasonable state of repair and that the condition of the dwelling-house is not due to the tenant's neglect or default or breach of express agreement, the court may order that the rent shall be reduced until the court is satisfied on the report of the sanitary authority or otherwise that the necessary repairs (other than any repairs for which the tenant is liable) have been executed, and subject to the terms of the order the rent shall be payable at such reduced rate as may be specified therein until the court is so satisfied.

For definition of "sitting tenant," v. § 12 (1) of the 1923 Act; "tenant," v. § 12 (1) (*f*) and (*g*); "repairs," v. § 2 (5).

(2) The powers of the county court under this section may be exercised by the court in any proceedings against a sitting tenant to which the last preceding section of this Act applies.

For definition of "sitting tenant," v. § 12 (1) of the 1923 Act; "tenant," v. § 12 (1) (*f*) and (*g*).

RESTRICTION ON CALLING IN OF MORTGAGES.

[**1923 Act, § 14.**]—14. (1) Where a dwelling-house in the occupation of a sitting tenant is subject to a mortgage to which the principal Act applied, the county court may, on the application of the landlord, make an order restraining the mortgagee from calling in his mortgage or taking steps for enforcing his security or for recovering the principal money thereby secured, if it is satisfied that such calling in, enforcement or recovery would cause exceptional hardship to the landlord. The county court may, on the application of the mortgagee or landlord rescind or vary any order so made if satisfied that by reason of any material change in circumstances, rescission or variation is necessary or proper.

(2) The restrictions imposed on a mortgagee by an order under this section may be imposed subject to such conditions as regards increase of interest or otherwise and for such time as appears to the court to be proper, but so nevertheless that the restrictions shall cease to be operative if at any time after the making of the order—

(*a*) interest is more than twenty-one days in arrear; or

(*b*) any covenant by the mortgagor (other than the covenant for the repayment of the principal money secured) is broken or not performed; or

(*c*) the mortgagor fails to keep the property in a proper state of repair or to pay the interest and instalments of principal recoverable under any prior encumbrance; or

(*d*) the sitting tenant ceases to be tenant of the dwelling-house.

(3) This section shall not apply to a mortgage where the principal money secured thereby is repayable by means of periodical instalments extending over a term of not less than ten years from the creation of the mortgage.

For definition of "sitting tenant," v. § 12 (1) of the 1923 Act; "mortgage," v. § 12 (1) (*h*); "landlord," v. § 12 (1) (*f*) and (*g*); "mortgagor" and "mortgagee," v. § 12 (1) (*f*).

For mortgages to which the principal Act applies, v. § 12 (4).

Restriction on Calling In of Mortgages—*continued.*

Generally as to the application of the principal Act to mortgages, v. §§ 4 and 7.

REGULATIONS AS TO REFERENCE COMMITTEES.

[**1923 Act, § 15.**]—15. (1) The constitution and procedure of reference committees established under this Part of this Act shall be such as may be prescribed by regulations made by the Minister of Health.

Power to establish reference committees, v. § 12 (5) of the 1923 Act.

(2) In addition to any questions that may be referred to a reference committee by the county court under this Part of this Act, provision may be made by the regulations for the reference to and determination by a reference committee of any questions in relation to the rent payable or to be paid by a sitting tenant which may be submitted to them by the tenant and landlord.

(3) Before any regulation under this section is made, it shall be laid in draft before both Houses of Parliament, and such regulation shall not be made unless both Houses by resolution approve the draft, either without modification or addition or with modifications or additions to which both Houses agree, but upon such approval being given the Minister of Health may make the regulation in the form in which it has been approved, and the regulation on being so made shall be of full force and effect.

"This part of this Act," *i.e.*, Part II. of the 1923 Act.

For definition of "sitting tenant," v. § 12 (1) of the 1923 Act; "tenant," § 12 (1) (*f*) and (*g*); "landlord," § 12 (1) (*f*) and (*g*).

RULES AS TO PROCEDURE.

[**1923 Act, § 16.**]—16. The Lord Chancellor may make such rules and give such directions as he thinks fit for the purpose of giving full effect to the provisions of this Part of this Act relative to legal proceedings.

"This part of this Act," *i.e.*, Part II. of the 1923 Act.

DURATION OF PART II.

[**1923 Act, § 17.**]—17. This Part of this Act shall continue in force until the twenty-fourth day of June, nineteen hundred and thirty:

Provided that, if a resolution is passed by both Houses of Parliament for the repeal of this Part of this Act on some earlier date, it shall be lawful for His Majesty in Council to repeal this Part of this Act on such date as may be specified in that behalf in the resolution.

"This part of this Act," *i.e.*, Part II. of the 1923 Act.

The duration of this part of the 1923 Act has been extended to December 25, 1932—v. 1925 Act, § 1 (2) and § 1 (3) (*c*).

APPENDIX I.

STATUTES NOW IN FORCE.

A.

Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

(10 & 11 Geo. 5, Ch. 17.)

An Act to consolidate and amend the Law with respect to the increase of rent and recovery of possession of premises in certain cases, and the increase of the rate of interest on, and the calling in of securities on such premises, and for purposes in connection therewith.

[2nd July, 1920.]

Be it enacted, &c.

RESTRICTIONS ON INCREASE OF RENT AND MORTGAGE INTEREST.

1. **Restrictions on increasing rent and mortgage interest.**—Subject to the provisions of this Act, where the rent of any dwelling-house to which this Act applies, or the rate of interest on a mortgage to which this Act applies, has been, since the twenty-fifth day of March nineteen hundred and twenty, or is hereafter, increased, then, if the increased rent or the increased rate of interest exceeds by more than the amount permitted under this Act the standard rent or standard rate of interest, the amount of such excess shall, notwithstanding any agreement to the contrary, be irrecoverable from the tenant or the mortgagor, as the case may be :

Provided that, where a landlord or mortgagee has increased the rent of any such dwelling-place or the rate of interest on any such mortgage since the said date, but before the passing of this Act, he may cancel such increase and repay any amount paid by virtue thereof, and in that case the rent or rate shall not be deemed to have been increased since that date.

2. **Permitted increases in rent.**—(1) The amount by which the increased rent of a dwelling-house to which this Act applies may exceed the standard rent shall, subject to the provisions of this Act, be as follows, that is to say :—

(*a*) Where the landlord has since the fourth day of August nineteen hundred and fourteen incurred, or hereafter incurs, expenditure on the improve-

RESTRICTIONS ON INCREASE OF RENT, &c.—*continued.*

ment or structural alteration of the dwelling-house (not including expenditure on decoration or repairs), an amount calculated at a rate per annum not exceeding six, or, in the case of such expenditure incurred after the passing of this Act, eight per cent. of the amount so expended:

Provided that the tenant may apply to the county court for an order suspending or reducing such increase on the ground that such expenditure is or was unnecessary in whole or in part, and the court may make an order accordingly:

(*b*) An amount not exceeding any increase in the amount for the time being payable by the landlord in respect of rates over the corresponding amount paid in respect of the yearly, half-yearly or other period which included the third day of August, nineteen hundred and fourteen, or in the case of a dwelling-house for which no rates were payable in respect of any period which included the said date, the period which included the date on which the rates first became payable thereafter:

(*c*) In addition to any such amounts as aforesaid, an amount not exceeding fifteen per centum of the net rent:

Provided that, except in the case a dwelling-house to which this Act applies but the enactments repealed by this Act did not apply, the amount of such addition shall not, during a period of one year after the passing of this Act, exceed five per cent.:

(*d*) In further addition to any such amounts as aforesaid—

(i) where the landlord is responsible for the whole of the repairs, an amount not exceeding twenty-five per cent. of the net rent; or

(ii) where the landlord is responsible for part and not the whole of the repairs, such lesser amount as may be agreed, or as may, on the application of the landlord or the tenant, be determined by the county court to be fair and reasonable having regard to such liability:

(*e*) In the case of dwelling-houses let by a railway company to persons in the employment of the company, such additional amount, if any, as is required in order to give effect to the agreement dated the first day of March nineteen hundred and twenty, relating to the rates of pay and conditions of employment of certain persons in the employment of railway companies, or any agreement, whether made before or after the passing of this Act, extending or modifying that agreement.

(2) At any time or times, not being less than three months after the date of any increase permitted by paragraph (*d*) of the foregoing subsection, the tenant or the sanitary authority may apply to the county court for an order suspending such increase, and also any increase under paragraph (*c*) of that subsection, on the ground that the house is not in all respects reasonably fit for human habitation, or is otherwise not in a reasonable state of repair.

The court on being satisfied by the production of a certificate of the sanitary authority or otherwise that any such ground as aforesaid is established, and on being further satisfied that the condition of the house is not due to the tenant's neglect or default or breach of express agreement, shall order that the increase be suspended until the court is satisfied, on the report of the sanitary authority or otherwise, that the necessary repairs (other than the repairs, if any, for which the tenant is liable) have been executed, and on the making of such order the increase shall cease to have effect until the court is so satisfied.

(3) Any transfer to a tenant of any burden or liability previously borne by the landlord shall, for the purposes of this Act, be treated as an alteration of rent, and where, as the result of such a transfer, the terms on which a dwelling-house is held are on the whole less favourable to the tenant than the previous terms, the rent shall be deemed to be increased, whether or not the sum periodically payable by way of rent is increased, and any increase of rent in respect of any transfer to a landlord of any burden or liability previously borne by the tenant where, as the result of such transfer, the terms on which any dwelling-house is held are on the whole not less favourable to the tenant than the previous terms, shall be deemed not to be an increase of rent for the purposes of this Act : Provided that, for the purposes of this section, the rent shall not be deemed to be increased where the liability for rates is transferred from the landlord to the tenant, if a corresponding reduction is made in the rent.

(4) On an application to a sanitary authority for a certificate or report under this section a fee of one shilling shall be payable, but, if the authority as the result of such application issues such a certificate as aforesaid, the tenant shall be entitled to deduct the fee from any subsequent payment of rent.

(5) For the purposes of this section, the expression " repairs " means any repairs required for the purpose of keeping premises in good and tenantable repair, and any premises in such a state shall be deemed to be in a reasonable state of repair, and the landlord shall be deemed to be responsible for any repairs for which the tenant is under no express liability.

(6) Any question arising under subsection (1), (2) or (3) of this section shall be determined on the application either of the landlord or the tenant by the county court, and the decision of the court shall be final and conclusive.

3. **Limitation as to permitted increases in rent.**—(1) Nothing in this Act shall be taken to authorise any increase of rent except in respect of a period during which but for this Act the landlord would be entitled to obtain possession, or any increase in the rate of interest on a mortgage except in respect of a period during which, but for this Act, the security could be enforced.

(2) Notwithstanding any agreement to the contrary, where the rent of any dwelling-house to which this Act applies is increased, no such increase shall be due or recoverable until or in respect of any period prior to the expiry of four clear weeks, or, where such increase is on account of an increase in rates, one clear week, after the landlord has served upon the tenant a valid notice in writing of his intention to increase the rent, which notice shall be in the form contained in the First Schedule to this Act, or in a form substantially to the same effect. If a notice served as aforesaid contains any statement or representation which is false or misleading in any material respect, the landlord shall be liable on summary conviction to a fine not exceeding ten pounds unless he proves that the statement was made innocently and without intent to deceive. Where a notice of an increase of rent which at the time was valid has been served on any tenant, the increase may be continued without service of any fresh notice on any subsequent tenant.

(3) A notice served before the passing of this Act of an intention to make any increase of rent which is permissible only by virtue of this Act shall not be deemed to be a valid notice for the purpose of this section.

4. **Permitted increase in rate of mortgage interest.**—The amount by which the increased rate of interest payable in respect of a mortgage to which this

RESTRICTIONS ON INCREASE OF RENT, &c.—*continued.*

Act applies may exceed the standard rate, shall be an amount not exceeding one per cent. per annum:

Provided that—

(*a*) the rate shall not be increased so as to exceed six and a half per cent. per annum; and

(*b*) except in the case of a dwelling-house to which this Act applies but the enactments repealed by this Act did not apply, the increase during a period of one year after the passing of this Act shall not exceed one-half per cent. per annum.

FURTHER RESTRICTIONS AND OBLIGATIONS ON LANDLORDS AND MORTGAGEES.

5.* **Restriction on right to possession.**—(1) No order or judgment for the recovery of possession of any dwelling-house to which this Act applies, or for the ejectment of a tenant therefrom, shall be made or given unless—

(*a*) any rent lawfully due from the tenant has not been paid, or any other obligation of the tenancy (whether under the contract of tenancy or under this Act) so far as the same is consistent with the provisions of this Act has been broken or not performed; or

(*b*) the tenant or any person residing with him has been guilty of conduct which is a nuisance or annoyance to adjoining occupiers, or has been convicted of using the premises or allowing the premises to be used for an immoral or illegal purpose, or the condition of the dwelling-house has, in the opinion of the court, deteriorated owing to acts of waste by or the neglect or default of the tenant or any such person; or

(*c*) the tenant has given notice to quit, and in consequence of that notice the landlord has contracted to sell or let the dwelling-house or has taken any other steps as a result of which he would, in the opinion of the court, be seriously prejudiced if he could not obtain possession; or

(*d*) the dwelling-house is reasonably required by the landlord for occupation as a residence for himself, or for any person bonâ fide residing or to reside with him, or for some person in his whole time employment or in the whole time employment of some tenant from him, and (except as otherwise provided by this subsection) the court is satisfied that alternative accommodation, reasonably equivalent as regards rent and suitability in all respects, is available; or

(*e*) the landlord is a local authority or a statutory undertaking and the dwelling-house is reasonably required for the purpose of the execution of the statutory duties or powers of the authority or undertaking, and the court is satisfied as aforesaid as respects alternative accommodation; or

(*f*) the landlord became the landlord after service in any of His Majesty's forces during the war and requires the house for his personal occupation and offers the tenant accommodation on reasonable terms in the same dwelling-house, such accommodation being considered by the court as reasonably sufficient in the circumstances; or

(*g*) the dwelling-house is required for occupation as a residence by a former

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* See 1923 Act, § 4, p. 138, *infra*; and 1924 Act, § 1, p 147, *infra*.

tenant thereof who gave up occupation in consequence of his service in any of His Majesty's forces during the war;

and, in any such case as aforesaid, the court considers it reasonable to make such an order or give such judgment.

The existence of alternative accommodation shall not be a condition of an order or judgment on any of the grounds specified in paragraph (*d*) of this subsection—

(i) where the tenant was in the employment of the landlord or a former landlord, and the dwelling-house was let to him in consequence of that employment and he has ceased to be in that employment; or

(ii) where the court is satisfied by a certificate of the county agricultural committee, or of the Minister of Agriculture and Fisheries pending the formation of such committee, that the dwelling-house is required by the landlord for the occupation of a person engaged on work necessary for the proper working of an agricultural holding; or

(iii) where the landlord gave up the occupation of the dwelling-house in consequence of his service in any of His Majesty's forces during the war; or

(iv) where the landlord became the landlord before the thirtieth day of September nineteen hundred and seventeen, or, in the case of a dwelling-house to which section four of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1919, applied, became the landlord before the fifth day of March nineteen hundred and nineteen, or in the case of a dwelling-house to which this Act applies but the enactments repealed by this Act did not apply, became the landlord before the twentieth day of May nineteen hundred and twenty, and in the opinion of the court greater hardship would be caused by refusing an order for possession than by granting it.

(2) At the time of the application for or the making or giving of any order or judgment for the recovery of possession of any such dwelling-house, or for the ejectment of a tenant therefrom, or in the case of any such order or judgment which has been made or given, whether before or after the passing of this Act, and not executed, at any subsequent time, the court may adjourn the application, or stay or suspend execution on any such order or judgment, or postpone the date of possession, for such period or periods as it thinks fit, and subject to such conditions (if any) in regard to payment by the tenant of arrears of rent, rent, or mesne profits and otherwise as the court thinks fit, and, if such conditions are complied with, the court may, if it thinks fit, discharge or rescind any such order or judgment.

(3) Where any order or judgment has been made or given before the passing of this Act, but not executed, and, in the opinion of the court, the order or judgment would not have been made or given if this Act had been in force at the time when such order or judgment was made or given, the court may, on application by the tenant, rescind or vary such order or judgment in such manner as the court may think fit for the purpose of giving effect to this Act.

(4) Notwithstanding anything in section one hundred and forty-three of the County Courts Act, 1888, or in section one of the Small Tenements Recovery Act, 1838, every warrant for delivery of possession of, or to enter and give possession of, any dwelling-house to which this Act applies, shall remain in force for three months from the day next after the last day named in the judgment or order for delivery of possession or ejectment, or, in the case of a

FURTHER RESTRICTIONS ON LANDLORDS—*continued.*

warrant under the Small Tenements Recovery Act, 1838, from the date of the issue of the warrant, and in either case for such further period or periods, if any, as the court shall from time to time, whether before or after the expiration of such three months, direct.

(5) An order or judgment against a tenant for the recovery of possession of any dwelling-house or ejectment therefrom under this section shall not affect the right of any sub-tenant to whom the premises or any part thereof have been lawfully sublet before proceedings for recovery of possession or ejectment were commenced, to retain possession under this section, or be in any way operative against any such sub-tenant.

(6) Where a landlord has obtained an order or judgment for possession or ejectment under this section on the ground that he requires a dwelling-house for his own occupation, and it is subsequently made to appear to the court that the order was obtained by misrepresentation or the concealment of material facts, the court may order the landlord to pay to the former tenant such sum as appears sufficient as compensation for damage or loss sustained by that tenant as the result of the order or judgment.

6. **Restriction on levy of distress for rent.**—No distress for the rent of any dwelling-house to which this Act applies shall be levied except with the leave of the county court, and the court shall, with respect of any application for such leave, have the same or similar powers with respect to adjournment, stay, suspension, postponement and otherwise as are conferred by the last preceding section of this Act in relation to applications for the recovery of possession :

Provided that this section shall not apply to distress levied under section one hundred and sixty of the County Courts Act, 1888.

The provisions of this section shall be in addition to and not in derogation of any of the provisions of the Courts (Emergency Powers) Act, 1914, or any Act amending or extending the same, except so far as those provisions are repealed by this Act.

7. **Restriction on calling in of mortgages.**—It shall not be lawful for any mortgagee under a mortgage to which this Act applies, so long as—

(*a*) interest at the rate permitted under this Act is paid and is not more than twenty-one days in arrear; and

(*b*) the covenants by the mortgagor (other than the covenant for the repayment of the principal money secured) are performed and observed; and

(*c*) the mortgagor keeps the property in a proper state of repair and pays all interest and instalments of principal recoverable under any prior encumbrance,

to call in his mortgage or to take any steps for exercising any right of foreclosure or sale, or for otherwise enforcing his security or for recovering the principal money thereby secured :

Provided that—

(i) this provision shall not apply to a mortgage where the principal money secured thereby is repayable by means of periodical instalments extending over a term of not less than ten years from the creation of the mortgage, nor shall this provision affect any power of sale exerciseable by a mortgagee who was on the twenty-fifth day of March nineteen hundred and twenty a mortgagee in possession,

or in cases where the mortgagor consents to the exercise by the mortgagee of the powers conferred by the mortgage; and

(ii) if, in the case of a mortgage of a leasehold interest the mortgagee satisfies the county court that his security is seriously diminishing in value or is otherwise in jeopardy, and that for that reason it is reasonable that the mortgage should be called in and enforced, the court may by order authorise him to call in and enforce the same, and thereupon this section shall not apply to such mortgage; but any such order may be made subject to a condition that it shall not take effect if the mortgagor within such time as the court directs pays to the mortgagee such portion of the principal sum secured as appears to the court to correspond to the diminution of the security.

8. **Restriction on premiums.**—(1) A person shall not, as a condition of the grant, renewal, or continuance of a tenancy or sub-tenancy of any dwelling-house to which this Act applies, require the payment of any fine, premium, or other like sum, or the giving of any pecuniary consideration, in addition to the rent, and, where any such payment or consideration has been made or given in respect of any such dwelling-house under an agreement made after the twenty-fifth day of March nineteen hundred and twenty, the amount or value thereof shall be recoverable by the person by whom it was made or given:

Provided that, where any agreement has been made since the said date but before the passing of this Act for the tenancy of a house to which this Act applies, but the enactments repealed by this Act did not apply, and the agreement includes provision for the payment of any fine, premium, or other like sum, or the giving of any pecuniary consideration in addition to the rent, that agreement shall, without prejudice to the operation of this section, be voidable at the option of either party thereto.

(2) A person requiring any payment or the giving of any consideration in contravention of this section shall be liable on summary conviction to a fine not exceeding one hundred pounds, and the court by which he is convicted may order the amount paid or the value of the consideration to be repaid to the person by whom the same was made or given, but such order shall be in lieu of any other method of recovery prescribed by this Act.

(3) This section shall not apply to the grant, renewal or continuance for a term of fourteen years or upwards of any tenancy.

9. **Limitation on rent of houses let furnished.**—(1) Where any person lets, or has, before the passing of this Act, let any dwelling-house to which this Act applies, or any part thereof, at a rent which includes payment in respect of the use of furniture, and it is proved to the satisfaction of the county court on the application of the lessee that the rent charged is yielding or will yield to the lessor a profit more than twenty-five per cent. in excess of the normal profit as hereinafter defined, the court may order that the rent, so far as it exceeds such sum as would yield such normal profit and twenty-five per cent. shall be irrecoverable, and that the amount of any payment of rent in excess of such sum which may have been made in respect of any period after the passing of this Act, shall be repaid to the lessee.

(2) For the purpose of this section, "normal profit" means the profit which

FURTHER RESTRICTIONS ON LANDLORDS—*continued.*

might reasonably have been expected from a similar letting in the year ending on the third day of August nineteen hundred and fourteen.

10. **Penalty for excessive charges for furnished lettings.**—Where any person after the passing of this Act lets any dwelling-house to which this Act applies or any part thereof at a rent which includes payment in respect of the use of furniture, and the rent charged yields to the lessor a profit which, having regard to all the circumstances of the case, and in particular to the margin of profit allowed under the last preceding section of this Act, is extortionate, then, without prejudice to any other remedy under this Act, the lessor shall be liable on summary conviction to a fine not exceeding one hundred pounds, and the court by which he is convicted may order that the rent so far as it exceeds the amount permitted by the last preceding section of this Act shall be irrecoverable and that the amount of any such excess shall be repaid to the lessee, but any such order shall be in lieu of any other method of recovery prescribed by this Act.

11. **Statement to be supplied as to standard rent.**—A landlord of any dwelling-house to which this Act applies shall, on being so requested in writing by the tenant of the dwelling-house, supply him with a statement in writing as to what is the standard rent of the dwelling house, and, if, without reasonable excuse, he fails within fourteen days to do so, or supplies a statement which is false in any material particular, he shall be liable on summary conviction to a fine not exceeding ten pounds.

APPLICATION AND INTERPRETATION OF ACT.

12. **Application and interpretation.**—(1) For the purposes of this Act, except where the context otherwise requires :—

(*a*) The expression " standard rent " means the rent at which the dwelling-house was let on the third day of August nineteen hundred and fourteen, or, where the dwelling-house was not let on that date, the rent at which it was last let before that date, or, in the case of a dwelling-house which was first let after the said third day of August, the rent at which it was first let :

Provided that, in the case of any dwelling-house let at a progressive rent payable under a tenancy agreement or lease, the maximum rent payable under such tenancy agreement or lease shall be the standard rent; and, where at the date by reference to which the standard rent is calculated, the rent was less than the rateable value the rateable value at that date shall be the standard rent;

(*b*) The expression " standard rate of interest " means, in the case of a mortgage in force on the third day of August nineteen hundred and fourteen, the rate of interest payable at that date, or, in the case of a mortgage created since that date, the original rate of interest;

(*c*) The expression " net rent " means, where the landlord at the time by reference to which the standard rent is calculated paid the rates chargeable on, or which but for the provisions of any Act would be chargeable on the occupier, the standard rent less the amount of such rates, and in any other case the standard rent;

(*d*) The expression " rates " includes water rents and charges, and any

increase in rates payable by a landlord shall be deemed to be payable by him until the rate is next demanded;

(*e*) The expression "rateable value" means the rateable value on the third day of August nineteen hundred and fourteen, or, in the case of a dwelling-house or a part of dwelling-house first assessed after that date, the rateable value at which it was first assessed;

(*f*) The expressions "landlord," "tenant," "mortgagee," and "mortgagor" include any person from time to time deriving title under the original landlord, tenant, mortgagee, or mortgagor;

(*g*) The expression "landlord" also includes in relation to any dwelling-house any person, other than the tenant, who is or would but for this Act be entitled to possession of the dwelling-house, and the expressions "tenant and tenancy" include sub-tenant and sub-tenancy, and the expression "let" includes sub-let; and the expression "tenant" includes the widow of a tenant dying intestate who was residing with him at the time of his death, or, where a tenant dying intestate leaves no widow or is a woman, such member of the tenant's family so residing as aforesaid as may be decided in default of agreement by the county court;

(*h*) The expression "mortgage" includes a land charge under the Land Transfer Acts, 1875 and 1897;

(*i*) The expressions "statutory undertaking" and "statutory duties or powers" include any undertaking, duties or powers, established, imposed or exercised under any order having the force of an Act of Parliament.

(2) This Act shall apply to a house or a part of a house let as a separate dwelling, where either the annual amount of the standard rent or the rateable value does not exceed—

(*a*) in the metropolitan police district, including therein the City of London, one hundred and five pounds;

(*b*) in Scotland, ninety pounds; and

(*c*) elsewhere, seventy-eight pounds;

and every such house or part of a house shall be deemed to be a dwelling-house to which this Act applies:

Provided that—

(i) this Act shall not, save as otherwise expressly provided, apply to a dwelling-house bonâ fide let at a rent which includes payments in respect of board, attendance, or use of furniture; and

(ii) the application of this Act to any house or part of a house shall not be excluded by reason only that part of the premises is used as a shop or office or for business, trade, or professional purposes; and

(iii) for the purposes of this Act, any land or premises let together with a house shall, if the rateable value of the land or premises let separately would be less than one quarter of the rateable value of the house, be treated as part of the house, but, subject to this provision, this Act shall not apply to a house let together with land other than the site of the house.

(3) Where, for the purpose of determining the standard rent or rateable value of any dwelling-house to which this Act applies, it is necessary to apportion the rent at the date in relation to which the standard rent is to be fixed, or the rateable value of the property in which that dwelling-house is

APPLICATION AND INTERPRETATION OF ACT—*continued.*

comprised, the county court may, on application by either party, make such apportionment as seems just, and the decision of the court as to the amount to be apportioned to the dwelling-house shall be final and conclusive.

(4) Subject to the provisions of this Act, this Act shall apply to every mortgage where the mortgaged property consists of or comprises one or more dwelling-houses to which this Act applies, or any interest therein, except that it shall not apply—

(*a*) to any mortgage comprising one or more dwelling-houses to which this Act applies and other land if the rateable value of such dwelling-houses is less than one-tenth of the rateable value of the whole of the land comprised in the mortgage; or

(*b*) to an equitable charge by deposit of title deeds or otherwise; or

(*c*) to any mortgage which is created after the passing of this Act.

(5) When a mortgage comprises one or more dwelling-houses to which this Act applies and other land, and the rateable value of such dwelling-houses is more than one-tenth of the rateable value of the whole of the land comprised in the mortgage, the mortgagee may apportion the principal money secured by the mortgage between such dwelling-houses and such other land by giving one calendar month's notice in writing to the mortgagor, such notice to state the particulars of such apportionment, and at the expiration of the said calendar month's notice this Act shall not apply to the mortgage so far as it relates to such other land, and for all purposes, including the mortgagor's right of redemption, the said mortgage shall operate as if it were a separate mortgage for the respective portions of the said principal money secured by the said dwelling-houses and such other land, respectively, to which such portions were apportioned :

Provided that the mortgagor shall, before the expiration of the said calendar month's notice, be entitled to dispute the amounts so apportioned as aforesaid, and in default of agreement the matter shall be determined by a single arbitrator appointed by the President of the Surveyors' Institution.

(6) Where this Act has become applicable to any dwelling-house or any mortgage thereon, it shall continue to apply thereto whether or not the dwelling-house continues to be one to which this Act applies.

(7) Where the rent payable in respect of any tenancy of any dwelling-house is less than two-thirds of the rateable value thereof, this Act shall not apply to that rent or tenancy nor to any mortgage by the landlord from whom the tenancy is held of his interest in the dwelling-house, and this Act shall apply in respect of such dwelling-house as if no such tenancy existed or ever had existed.

(8) Any rooms in a dwelling-house subject to a separate letting wholly or partly as a dwelling shall, for the purposes of this Act, be treated as a part of a dwelling-house let as a separate dwelling.

(9) This Act shall not apply to a dwelling-house erected after or in course of erection on the second day of April nineteen hundred and nineteen, or to any dwelling-house which has been since that date or was at that date being bonâ fide reconstructed by way of conversion into two or more separate and self-contained flats or tenements; but, for the purpose of any enactment relating to rating, the gross estimated rental or gross value of any such house to which this Act would have applied if it had been erected or so reconstructed before the

third day of August nineteen hundred and fourteen, and let at that date, shall not exceed—

(*a*) if the house forms part of a housing scheme to which section seven of the Housing, Town Planning, &c. Act, 1919, applies, the rent (exclusive of rates) charged by the local authority in respect of that house; and

(*b*) in any other case the rent (exclusive of rates) which would have been charged by the local authority in respect of a similar house forming part of such a scheme as aforesaid.

(10) Where possession has been taken of any dwelling-houses by a Government department during the war, under the Defence of the Realm regulations, for the purpose of housing workmen, this Act shall apply to such houses as if the workmen in occupation thereof at the passing of this Act were in occupation as tenants of the landlords of such houses.

13. **Application to business premises.**—(1) This Act shall apply to any premises used for business trade or professional purposes or for the public service as it applies to a dwelling-house, and as though references to "dwelling-house" "house" and "dwelling" included references to any such premises, but this Act in its application to such premises shall have effect subject to the following modifications :—

(*a*) The following paragraph shall be substituted for paragraph (*c*) of subsection (1) of section two :

(*c*) In addition to any such amounts as aforesaid, an amount not exceeding thirty-five per centum of the net rent :

(*b*) The following paragraph shall be substituted for paragraph (*d*) of subsection (1) of section five :

(*d*) the premises are reasonably required by the landlord for business trade or professional purposes or for the public service, and (except as otherwise provided by this subsection) the court is satisfied that alternative accommodation, reasonably equivalent as regards rent and suitability in all respects, is available :

(*c*) The following paragraph shall be added after paragraph (*g*) of the same subsection :

(*h*) The premises are bonâ fide required for the purpose of a scheme of reconstruction or improvement which appears to the court to be desirable in the public interest :

(*d*) Paragraph (i) of the same subsection shall not apply :

(*e*) Sections nine and ten shall not apply.

(2) The application of this Act to such premises as aforesaid shall not extend to a letting or tenancy in any market or fair where the rent or conditions of tenancy are controlled or regulated by or in pursuance of any statute or charter.

(3) This section shall continue in force until the twenty-fourth day of June nineteen hundred and twenty-one.

GENERAL

14. **Recovery of sums made irrecoverable, &c.**—(1) Where any sum has, whether before or after the passing of this Act, been paid on account of any rent or mortgage interest, being a sum which is by virtue of this Act, or any Act repealed by this Act, irrecoverable by the landlord or mortgagee, the sum so paid shall be recoverable from the landlord or mortgagee who received the

GENERAL—*continued.*

payment or his legal personal representative by the tenant or mortgagor by whom it was paid, and any such sum, and any other sum which under this Act is recoverable by a tenant from a landlord or payable or repayable by a landlord to a tenant, may, without prejudice to any other method of recovery, be deducted by the tenant or mortgagor from any rent or interest payable by him to the landlord or mortgagee.

(2) If—

(*a*) any person in any rent book or similar document makes an entry showing or purporting to show any tenant as being in arrear in respect of any sum which by virtue of any such Act is irrecoverable; or

(*b*) where any such entry has, before the passing of this Act, been made by or on behalf of any landlord, the landlord, on being requested by or on behalf of the tenant so to do, refuses or neglects to cause the entry to be deleted within seven days,

that person or landlord shall, on summary conviction, be liable to a fine not exceeding ten pounds, unless he proves that he acted innocently and without intent to deceive.

15. **Conditions of statutory tenancy.**—(1) A tenant who by virtue of the provisions of this Act retains possession of any dwelling-house to which this Act applies shall, so long as he retains possession, observe and be entitled to the benefit of all the terms and conditions of the original contract of tenancy, so far as the same are consistent with the provisions of this Act, and shall be entitled to give up possession of the dwelling-house only on giving such notice as would have been required under the original contract of tenancy, or, if no notice would have been so required, on giving not less than three months' notice:

Provided that, notwithstanding anything in the contract of tenancy, a landlord who obtains an order or judgment for the recovery of possession of the dwelling-house or for the ejectment of a tenant retaining possession as aforesaid shall not be required to give any notice to quit to the tenant.

(2) Any tenant retaining posession as aforesaid shall not as a condition of giving up possession ask or receive the payment of any sum, or the giving of any other consideration, by any person other than the landlord, and any person acting in contravention of this provision shall be liable on summary conviction to a fine not exceeding one hundred pounds, and the court by which he was convicted may order any such payment or the value of any such consideration to be paid to the person by whom the same was made or given, but any such order shall be in lieu of any other method of recovery prescribed by this Act,

(3) Where the interest of a tenant of a dwelling-house to which this Act applies is determined, either as the result of an order or judgment for possession or ejectment, or for any other reason, any sub-tenant to whom the premises or any part thereof have been lawfully sublet shall, subject to the provisions of this Act, be deemed to become the tenant of the landlord on the same terms as he would have held from the tenant if the tenancy had continued.

16. **Minor amendments of law.**—(1) Section three of the Poor Rate Assessment and Collection Act, 1869, shall, except so far as it relates to the metropolis, have effect as though for the limits of value specified in that

section there were substituted limits twenty-five per cent. in excess of the limits so specified, and that section and section four of the same Act shall have effect accordingly.

(2) It shall be deemed to be a condition of the tenancy of any dwelling-house to which this Act applies that the tenant shall afford to the landlord access thereto and all reasonable facilities for executing therein any repairs which the landlord is entitled to execute.

(3) Where the landlord of any dwelling-house to which this Act applies has served a notice to quit on a tenant, the acceptance of rent by the landlord for a period not exceeding three months from the expiration of the notice to quit shall not be deemed to prejudice any right to possession of such premises, and, if any order for possession is made, any payment of rent so accepted shall be treated as mesne profits.

17. **Rules as to procedure.**—(1) The Lord Chancellor may make such rules and give such directions as he thinks fit for the purpose of giving effect to this Act, and may, by those rules or directions, provide for any proceedings for the purposes of this Act being conducted so far as desirable in private and for the remission of any fees.

(2) A county court shall have jurisdiction to deal with any claim or other proceedings arising out of this Act or any of the provisions thereof, notwithstanding that by reason of the amount of claim or otherwise the case would not but for this provision be within the jurisdiction of a county court, and, if a person takes proceedings under this Act in the High Court which he could have taken in the county court, he shall not be entitled to recover any costs.

18. **Application to Scotland and Ireland.**—(1) This Act shall apply to Scotland, subject to the following modifications:—

(*a*) "Mortgage" and "encumbrance" mean a heritable security including a security constituted by absolute disposition qualified by back bond or letter; "mortgagor" and "mortgagee" mean respectively the debtor and the creditor in a heritable security; "covenant" means obligagation; "mortgaged property" means the heritable subject or subjects included in a heritable security; "rateable value" means yearly value according to the valuation roll; "rateable value on the third day of August nineteen hundred and fourteen" means yearly value according to the valuation roll for the year ending fifteenth day of May nineteen hundred and fifteen; "assessed" means entered in the valuation roll; "land" means lands and heritages; "rates" means assessments as defined in the House Letting and Rating (Scotland) Act, 1911; "Lord Chancellor" and "High Court" mean the Court of Session; "rules" means acts of sederunt; "county court" means the sheriff court; "sanitary authority" means the local authority under the Public Health (Scotland) Act, 1897; "mesne profits" means profits; the Board of Agriculture for Scotland shall be substituted for the Minister of Agriculture and Fisheries; the twenty-eighth day of May shall be substituted for the twenty-fourth day of June; the reference to the county agricultural committee shall be construed as a reference to the body of persons constituted with respect to any area by the Board of Agriculture for Scotland under subsection (2) of section eleven of the Corn Production Act, 1917; references to levying distress shall be construed as references to doing diligence; the reference to the President of the Surveyors' Institution

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shall be construed as a reference to the Chairman of the Scottish Committee of the Surveyors' Institution; a reference to section five of the Housing, Town Planning, &c. (Scotland) Act, 1919, shall be substituted for a reference to section seven of the Housing, Town Planning, &c. Act, 1919; and a reference to section one of the House Letting and Rating (Scotland) Act, 1911, shall be substituted for a reference to section three of the Poor Rate Assessment and Collection Act, 1869:

(*b*) Nothing in paragraph (*b*) of subsection (1) of the section of this Act relating to permitted increases in rent shall permit any increase in rent in respect of any increase after the year ending Whitsunday nineteen hundred and twenty in the amount of the rates payable by the landlord other than rates for which he is responsible under the House Letting and Rating (Scotland) Act, 1911:

(*c*) Paragraph (*d*) of subsection (1) of the section of this Act relating to application and interpretation shall not apply:

(*d*) Where any dwelling-house, to which the Acts repealed by this Act applied, is subject to a right of tenancy arising from a yearly contract or from tacit relocation, and ending at Whitsunday nineteen hundred and twenty-one, the year ending at the said term of Whitsunday shall be deemed to be a period during which, but for this Act, the landlord would be entitled to obtain possession of such dwelling-house.

(2) This Act shall apply to Ireland subject to the following modifications:—

(*a*) A reference to the Lord Chanceller of Ireland shall be substituted for the reference to the Lord Chancellor:

(*b*) A reference to section fifteen of the Summary Jurisdiction (Ireland) Act, 1851, shall be substituted for the reference to section one of the Small Tenements Recovery Act, 1838:

(*c*) The expression "mortgage" includes a charge by registered disposition under the Local Registration of Title (Ireland) Act, 1891, and any notice of the apportionment of the principal money secured by a mortgage, if and when the notice becomes operative under this Act, and the award of any arbitrator with reference to any such apportionment may be registered under the enactments relative to the registration of deeds or titles as the case requires:

(*d*) The expression "rateable value" means the annual rateable value under the Irish Valuation Acts: Provided that, where part of a house let as a separate dwelling is not separately valued under those Acts, the Commissioner of Valuation and Boundary Surveyor may, on the application of the landlord or tenant, make such apportionment of the rateable value of the whole house as seems just, and his decision as to the amount to be apportioned to the part of the house shall be final and conclusive, and that amount shall be taken to be the rateable value of the part of the house for the purposes of this Act but not further or otherwise:

(*e*) The following paragraph shall be substituted for paragraph (ii) of subsection (1) of section five of this Act:

(ii) Where the court is satisfied that the dwelling-house is required by the landlord for the occupation of a person engaged

on work necessary for the proper working of an agricultural holding : or

(*f*) The following subsection shall be substituted for subsection (9) of section twelve of this Act :

(9) This Act shall not apply to a dwelling-house erected after, or in course of erection on, the second day of April nineteen hundred and nineteen, or to any dwelling-house which has been since that date or was at that date being bonâ fide reconstructed by way of conversion into two or more separate and self-contained flats or tenements ; but the rateable value of any such dwelling-house to which this Act would have applied if it had been erected or so reconstructed before the said date shall be ascertained as though the rent for the purposes of section eleven of the Valuation (Ireland) Act, 1852, were the rent for which a similar dwelling-house might have been reasonably expected to let on the third day of August nineteen hundred and fourteen, the probable average annual cost of repairs, insurance, and other expenses (if any) necessary to maintain the dwelling-house in its actual state, and all rates, taxes, and public charges, if any (except tithe rentcharge), being paid by the tenant :

(*g*) The medical officer of health of a dispensary district shall be substituted for the sanitary authority in section two of this Act and in the First Schedule thereto, and the issue of certificates and the payment of fees in connection with applications by tenants under the said section shall be subject to regulations to be made by the Local Government Board for Ireland :

(*h*) This Act shall not apply to any dwelling-house provided by a local authority under the Labourers (Ireland) Acts, 1883 to 1919, or under any of those Acts.

19. **Short title, duration and repeal.**—(1) This Act may be cited as the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

(2) Except as otherwise provided, this Act shall continue in force until the twenty-fourth day of June nineteen hundred and twenty-three.

Provided that the expiration of this Act or any part thereof shall not render recoverable by a landlord any rent, interest or other sum which during the continuance thereof was irrecoverable, or affect the right of a tenant to recover any sum which during the continuance thereof was under this Act recoverable by him.

(3) The enactments mentioned in the Second Schedule to this Act are hereby repealed to the extent specified in the third column of that schedule :

Provided that, without prejudice to the operation of section thirty-eight of the Interpretation Act, 1889, nothing in this repeal shall render recoverable any sums which at the time of the passing of this Act were irrecoverable, or affect the validity of any order of a court, or any rules or directions made or given under any enactment repealed by this Act, all of which orders, rules, and directions if in force at the date of the passing of this Act shall have effect as if they were made or given under this Act, and any proceedings pending in any court at the date of the passing of this Act, under any enactment repealed by this Act, shall be deemed to have been commenced under this Act.

SCHEDULES.

FIRST SCHEDULE.

FORM OF NOTICE BY LANDLORD.

INCREASE OF RENT AND MORTGAGE INTEREST (RESTRICTIONS) ACT, 1920.

To Date

Address of premises to which this notice refers - - }

Take notice that I intend to increase the rent of *l.* *s.* *d.* per at present payable by you as tenant of the above-named premises by the amount of *l.* *s.* *d.* per

The increase is made up as follows:—

(*a*) *l.* *s.* *d.* under paragraph (*a*) of subsection (1) of section two of the Act, being six [eight] per cent. on *l.* *s.* *d.* expended by me since [*insert date*] on improvements and structural alterations, and consisting of*

(*b*) *l.* *s.* *d.* under paragraph (*b*) of subsection (1) of section two of the Act, on account of an increase in the rates payable by me from *l.* *s.* *d.* per to *l.* *s.* *d.* per in respect of the premises.

(*c*) *l.* *s.* *d.* under paragraph (*c*) of subsection (1) of section two of the Act, being per cent. on the net rent of the premises. The net rent is *l.* *s.* *d.* The standard rent is *l.* *s.* *d.*

(*d*) *l.* *s.* *d.* under paragraph (*d*) of subsection (1) of section two of the Act, being per cent. on the net rent of the premises. The net rent is *l.* *s.* *d.* The standard rent is *l.* *s.* *d.*

The increase under head (*b*) will date from , being one clear week from the date of this notice,§ and the remaining increases from , being four clear weeks from the date of this notice.§

†The increase under head (*d*) is on account of my responsibility for repairs, for no part [part only] of which are you under an express liability.

‡At any time or times, not being less than three months after the day of 19 , you are entitled to apply to the county court for an order suspending the increases under heads (*c*) and (*d*) above if you consider that the premises are not in all respects reasonably fit for human habitation or otherwise not in a reasonable state of repair. You will be required to satisfy the county court, by a report of the sanitary authority or otherwise, that your application is well founded, and for this purpose you are entitled to apply to the sanitary authority for a certificate. A fee of one shilling is chargeable on

§ See 1923 Act, § 6 (2), p. 142, *infra*.

any application for a certificate, but, if the certificate is granted, you can deduct this sum from your rent. The address of the sanitary authority is

Signed

Address

* Here state improvements and alterations effected.

† Where the tenant is under an express liability for part of the repairs, the increase under head (*d*) is to be settled in default of agreement by the county court.

‡ This paragraph need not be included if there is no increase under head (*d*).

SECOND SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
5 & 6 Geo. 5. c. 97.	The Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915.	The whole Act.
7 & 8 Geo. 5. c. 25.	The Courts (Emergency Powers) Act, 1917.	Ss. 4, 5 and 7.
9 & 10 Geo. 5. c. 7.	The Increase of Rent and Mortgage Interest (Restrictions) Act, 1919.	The whole Act.
9 & 10 Geo. 5. c. 90.	The Increase of Rent, &c. (Amendment) Act, 1919.	The whole Act.

B.

Increase of Rent and Mortgage Interest Restrictions (Continuance) Act, 1923.

(13 & 14 GEO. 5, CH. 7.)

An Act to continue the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, and any enactment amending that Act, until the thirty-first day of July, nineteen hundred and twenty-three.

[17th May, 1923.]

BE it enacted, &c.

1. **Continuance of 10 & 11 Geo. 5. c. 17.**—The Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, and any enactment amending that Act, shall continue in force until the thirty-first day of July, nineteen hundred and twenty-three.

INCREASE OF RENT, &c. (CONTINUANCE) ACT, 1923—*continued.*

2. **Short title and extent.**—This Act may be cited as the Increase of Rent and Mortgage Interest Restrictions (Continuance) Act, 1923, and does not extend to Northern Ireland.

C.

Rent Restrictions (Notices of Increase) Act, 1923.

(13 & 14 GEO. 5, CH. 13.)

An Act to amend the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, with respect to the effect of notices to increase rent given thereunder; and for purposes consequential thereon.

[7th June, 1923.]

BE it enacted, &c.

1. **Effect of notices to increase rent under principal Act.**—(1) Where notice of intention to increase rent has, whether before or after the passing of this Act, been served on a tenant in conformity with subsection (2) of section three of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920 (hereinafter referred to as the principal Act), and a notice to terminate the tenancy was necessary in order to make such increase effective, the notice of intention to increase the rent shall have effect and shall be deemed always to have had effect as if it were or had been also a notice to terminate the existing tenancy on the day immediately preceding the day as from which the increase is or was first to take effect, or on the earliest day thereafter on which if it had been a notice to terminate the tenancy, it would have been effective for that purpose, and in the latter case a notice of increase served before the passing of this Act shall be deemed to have had effect as if such earliest date had been specified in the notice as the date as from which the increase was to take effect:

Provided that—

(*a*) nothing in this Act shall entitle a landlord after the passing of this Act to recover from a tenant, in respect of any period before the first day of December, nineteen hundred and twenty-two, the increase of rent made valid by this Act, or any sums which have been recovered from the landlord before that date by means of deductions from rent or otherwise, or any rent due before that date which has not been paid by reason of such deductions having been made therefrom; but section fourteen, subsection (1), of the principal Act shall not apply to an increase of rent made valid by this Act which was paid by, or recovered from, a tenant prior to the first day of December, nineteen hundred and twenty-two;

(*b*) nothing in this Act shall affect the right to enforce any judgment of a court of competent jurisdiction given before the fifteenth day of February, nineteen hundred and twenty-three, or render recoverable any sum paid under such a judgment.

(2) Any increase of rent made valid by this Act is hereinafter referred to as a validated increase of rent.

2. **Payment of arrears by instalments.**—(1) The amount due under this Act on account of any arrears of rent, that is to say,—

(*a*) any validated increase of rent in respect of the period from the first day of December, nineteen hundred and twenty-two, to the date of the passing of this Act, both inclusive; and

(*b*) any sum which during the said period has been recovered by the tenant from the landlord by deductions from rent or otherwise, and which would not have been so recoverable had this Act been then in force;

shall be payable by instalments with and as part of the periodical payments of rent, each instalment being fifteen per cent. of the standard rent for the week, month, or other period for which the rent is payable, fractions of a penny being disregarded; and such instalments shall continue payable until the whole of the amount of such arrears is paid off:

Provided that—

(i) the tenant may at any time pay to the landlord the full amount of such arrears subject to the deduction of the aggregate amount of the instalments (if any) already paid; and

(ii) if a tenant by whom any such instalments are payable gives up possession of the premises either voluntarily or on any order or judgment of a court, the balance of the sum payable by instalments shall immediately become due and recoverable.

(2) A landlord claiming that a sum on account of arrears of rent is due to him under this Act shall serve on the tenant a notice to that effect, and the notice shall specify the amount so claimed and the amount of the instalments claimed to be payable, and the first instalment shall not be payable until after the expiration of one clear week from the date of the notice. If such notice contains any statement or representation which is false or misleading in any material respect, the landlord shall be liable on summary conviction to a fine not exceeding ten pounds unless he proves that the statement was made innocently and without intent to deceive.

(3) The notice shall be in the form contained in the Schedule to this Act, or in a form substantially to the same effect, and the landlord shall furnish the tenant with details in writing showing how the amount claimed is arrived at, and how the amount of the instalments has been calculated.

(4) Any question as to the amount of arrears due from a tenant, or the amount of any instalment, shall be determined on the application either of the landlord or the tenant by the county court, and the decision of the court shall be final and conclusive.

3. **Power to suspend liability if premises unfit for human habitation or in state of disrepair.**—(1) A tenant, who becomes by virtue of this Act liable to pay any sum by way of rent or on account of arrears, or the sanitary authority, may apply to the county court for an order suspending such liability on the ground that the house is not in all respects reasonably fit for human habitation or that it is otherwise not in a reasonable state of repair, and section two of the principal Act shall apply as if the application had been made under subsection (2) of that section.

(2) Where the liability in respect of the payment of instalments is so suspended, the instalments which would have become payable during the period of suspension, shall, for the purpose of calculating the aggregate amount of instalments paid, be deemed to have been paid.

(3) Where a tenant has obtained from the sanitary authority a certificate that the house is not in a reasonable state of repair, and has served a copy of

NOTICES OF INCREASE ACT, 1923—*continued.*

the certificate upon the landlord, it shall be a good defence to any claim against the tenant for the payment of any sum which the tenant is by virtue of this Act liable to pay by way of rent or on account of arrears in respect of any subsequent rental period that the house was not in a reasonable state of repair during that period, and in any proceedings against the tenant for the enforcement of such claim (including proceedings for recovery of possession or ejectment on the ground of non-payment of rent so far as the rent unpaid includes any such sum), the production of the said certificate shall be sufficient evidence that the house was and continues to be in the condition therein mentioned unless the contrary is proved:

Provided that the foregoing provision shall not apply in any case where and so far as the condition of the house is due to the tenant's neglect or default or breach of express agreement.

(4) For the purposes of this Act, a certificate of a sanitary authority shall specify what works (if any) require to be executed in order to put the house into a reasonable state of repair.

(5) An instrument purporting to be a certificate of a sanitary authority and to be signed by an officer of the authority shall, without further proof, be taken to be a certificate of the authority unless the contrary is proved.

(6) A sanitary authority may appoint a committee for the purposes of this Act and may delegate, with or without restrictions, to such committee or to an existing committee of the authority all or any of the powers of the authority under this Act.

4. **Short title and construction.**—This Act may be cited as the Rent Restrictions (Notices of Increase) Act, 1923, and shall be construed as one with the principal Act, except that this Act shall not extend to Ireland.

SCHEDULE.

FORM OF NOTICE BY LANDLORD.

RENT RESTRICTIONS (NOTICES OF INCREASE) ACT, 1923.

Date

To

Address of premises to which this notice refer

Take notice that I claim that the sum of is due to me from you as tenant of the above premises on account of arrears of rent under the above-mentioned Act.

The amount due on account of such arrears is payable by instalments with, and as part of, your weekly [*monthly, or other periodical*] rent until the amount of such arrears is paid off. The first instalment will be payable on the day of *.

The amount of the instalments claimed by me is a week [*month, or other period, as the case may be*].

If you wish to dispute the amount of the sum claimed or of the instalments, you are entitled to apply to the county court of .

You are entitled to apply to the county court for an order suspending any sum due from you by way of rent, or on account of arrears, under the above-mentioned Act, if you consider that the premises are not in all respects reasonably fit for human habitation or otherwise not in a reasonable state of repair. You will be required to satisfy the county court, by a report of the sanitary authority or otherwise, that your application is well founded, and for this purpose you are entitled to apply to the sanitary authority for a certificate. A fee of one shilling is chargeable, but, if the certificate is granted, you can deduct this sum from the sum due from you as aforesaid. The address of the sanitary authority is

If at any time you give up possession of the above premises, either voluntarily or on an order or judgment of the court, the balance of the sum payable by instalments will immediately become due.

A statement is sent herewith showing how the amount of the above claim is arrived at, and how the amount of the instalments has been calculated.

Signed

Address

* The date to be inserted will be the first rent day after the expiration of one clear week from the date of the notice.

D.

Rent and Mortgage Interest Restrictions Act, 1923.

(13 & 14 GEO. 5, CH. 32.)

An Act to amend and prolong the duration of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, and any enactment amending that Act, and to make provision as to the rent and recovery of possession of premises in certain cases after the expiry of that Act, and for purposes in connection therewith.

[31st July, 1923.]

BE it enacted, etc.

PART I.

AMENDMENT AND PROLONGATION OF DURATION OF PRINCIPAL ACT.

1. **Prolongation of duration of principal Act.**—Subject to the provisions of this Act, the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920 (hereinafter referred to as the principal Act), shall continue in force until the twenty-fourth day of June, nineteen hundred and twenty-five.

2. **Exclusion of dwelling-houses from application of principal Act in certain cases.**—(1) Where the landlord of a dwelling-house to which the principal Act applies is in possession of the whole of the dwelling-house at the passing of this Act, or comes into possession of the whole of the dwelling-house at any time after the passing of this Act, then from and after the passing of this Act, or from and after the date when the landlord subsequently comes into possession, as the case may be, the principal Act shall cease to apply to the dwelling-house :

Provided that, where part of a dwelling-house to which the principal Act

AMENDMENT OF PRINCIPAL ACT—*continued.*

applies is lawfully sub-let, and the part so sub-let is also a dwelling-house to which the principal Act applies, the principal Act shall not cease to apply to the part so sub-let by reason of the tenant being in or coming into possession of that part, and, if the landlord is in, or comes into possession of, any part not so sub-let, the principal Act shall cease to apply to that part, notwithstanding that a sub-tenant continues in, or retains, possession of any other part by virtue of the principal Act:

Provided also that, where a landlord comes into possession under an order or judgment made or given after the passing of this Act, on the ground of non-payment of rent, the principal Act shall, notwithstanding anything in the foregoing provisions of this subsection, continue to apply to the dwelling-house.

(2) Where, at any time after the passing of this Act, the landlord of a dwelling-house to which the principal Act applies grants to the tenant a valid lease of the dwelling-house for a term ending at some date after the twenty-fourth day of June, nineteen hundred and twenty-six, being a term of not less than two years, or enters into a valid agreement with the tenant for a tenancy for such a term, the principal Act shall, as from the commencement of the term, cease to apply to the dwelling-house, and nothing in the principal Act shall be taken as preventing or invalidating the payment of any agreed sum as part of the consideration for such lease or agreement:

Provided that, where part of the dwelling-house is lawfully sub-let at the commencement of the term, and is a dwelling-house to which the principal Act applies, that part shall, notwithstanding anything in the foregoing provisions of this subsection, continue to be a dwelling-house to which the principal Act applies.

(3) For the purposes of this section, the expression "possession" shall be construed as meaning "actual possession," and a landlord shall not be deemed to have come into possession by reason only of a change of tenancy made with his consent.

3. **Determination of certain leases and tenancies.**—Where before the passing of this Act the landlord of a dwelling-house to which the principal Act applies has granted to the tenant a valid lease of the dwelling-house for a term ending at some date after the twenty-fourth day of June, nineteen hundred and twenty-three, or has entered into a valid agreement with the tenant for a tenancy for such a term, and the rent thereby reserved is reserved at a rate which after but not before such last mentioned date exceeds the standard rent and the increases permitted under the principal Act or this Act, the landlord may, by three months' notice in writing expiring not earlier than the twenty-first day of December, nineteen hundred and twenty-three, and not later than the thirty-first day of March, nineteen hundred and twenty-four, determine the said lease or tenancy, provided that, if within one month of the receipt of such notice the lessee or tenant shall give to the landlord notice in writing that he elects to abide by the said lease or agreement and the terms thereof, then the said lease or agreement shall remain in full force and effect in every respect including the amount of the rent thereby expressed to be reserved unaffected by the principal Act or this Act.

4. **Restriction on right to possession.**—The following section shall be substituted for section five of the principal Act, namely:—

"5.—(1) No order or judgment for the recovery of possession of any dwelling-

house to which this Act applies, or for the ejectment of a tenant therefrom, shall be made or given unless—

" (*a*) any rent lawfully due from the tenant has not been paid, or any other obligation of the tenancy (whether under the contract of tenancy or under this Act) so far as the same is consistent with the provisions of this Act has been broken or not performed; or

" (*b*) the tenant or any person residing or lodging with him or being his sub-tenant has been guilty of conduct which is a nuisance or annoyance to adjoining occupiers, or has been convicted of using the premises or allowing the premises to be used for an immoral or illegal purpose, or the condition of the dwelling-house has, in the opinion of the court, deteriorated owing to acts of waste by or the neglect or default of the tenant or any such person, and, where such person is a lodger or sub-tenant, the court is satisfied that the tenant has not, before the making or giving of the order or judgment, taken such steps as he ought reasonably to have taken for the removal of the lodger or sub-tenant; or

" (*c*) the tenant has given notice to quit, and in consequence of that notice the landlord has contracted to sell or let the dwelling-house or has taken any other steps as a result of which he would, in the opinion of the court, be seriously prejudiced if he could not obtain possession; or

" (*d*) the dwelling-house is reasonably required by the landlord for occupation as a residence for himself, or for any son or daughter of his over eighteen years of age, or for any person *bonâ fide* residing with him, or for some person engaged in his whole time employment or in the whole time employment of some tenant from him or with whom, conditional on housing accommodation being provided, a contract for such employment has been entered into, and (except as otherwise provided by this subsection) the court is satisfied that alternative accommodation is available which is reasonably suitable to the means of the tenant and to the needs of the tenant and his family as regards extent, character, and proximity to place of work and which consists either of a dwelling-house to which this Act applies, or of premises to be let as a separate dwelling on terms which will afford to the tenant security of tenure reasonably equivalent to the security afforded by this Act in the case of a dwelling-house to which this Act applies; or

" (*e*) the dwelling-house is reasonably required for the purpose of the execution of the statutory duties or powers of a local authority, or statutory undertaking, or for any purpose which, in the opinion of the court, is in the public interest, and the court in either case is satisfied as aforesaid as respects alternative accommodation; or

" (*f*) the landlord became the landlord after service in any of His Majesty's forces during the war and requires the house for his personal occupation and offers the tenant accommodation on reasonable terms in the same dwelling-house, such accommodation being considered by the court as reasonably sufficient in the circumstances; or

" (*g*) the dwelling-house is required for occupation as a residence by a former tenant thereof who gave up occupation in consequence of his service in any of His Majesty's forces during the war; or

" (*h*) the tenant without the consent of the landlord has at any time after the thirty-first day of July, nineteen hundred and twenty-three,

AMENDMENT OF PRINCIPAL ACT—*continued.*

assigned or sub-let the whole of the dwelling-house or sub-let part of the dwelling-house, the remainder being already sub-let; or

" (*i*) the dwelling-house consists of or includes premises licensed for the sale of intoxicating liquor, and the tenant has committed an offence as holder of the licence or has not conducted the business to the satisfaction of the licensing justices or the police authority, or has carried it on in a manner detrimental to the public interest, or the renewal of the licence has for any reason been refused;

and, in any such case as aforesaid, the court considers it reasonable to make such an order or give such judgment.

" The existence of alternative accommodation shall not be a condition of an order or judgment on any of the grounds specified in paragraph (*d*) of this subsection—

" (i) where the tenant was in the employment of the landlord or a former landlord, and the dwelling-house was let to him in consequence of that employment and he has ceased to be in that employment; or

" (ii) where the court is satisfied by a certificate of the county agricultural committee, or of the Minister of Agriculture and Fisheries pending the formation of such committee, that the dwelling-house is required by the landlord for the occupation of a person engaged on work necessary for the proper working of an agricultural holding, or with whom conditional on housing accommodation being provided, a contract for employment on such work has been entered into; or

" (iii) where the landlord gave up the occupation of the dwelling-house in consequence of his service in any of His Majesty's forces during the war; or

" (iv) * where the landlord or the husband or wife of the landlord became the landlord before the thirtieth day of June, nineteen hundred and twenty-two, and the dwelling-house is reasonably required by him for occupation as a residence for himself or for any son or daughter of his over eighteen years of age; or

" (v) where the landlord or the husband or wife of the landlord did not become the landlord before the thirtieth day of June, nineteen hundred and twenty-two, and the dwelling-house is reasonably required by him for occupation as a residence for himself or for any son or daughter of his over eighteen years of age, and the court is satisfied that greater hardship would be caused by refusing to grant an order or judgment for possession than by granting it.

" (2) At the time of the application for or the making or giving of any order or judgment for the recovery of possession of any such dwelling-house, or for the ejectment of a tenant therefrom, or in the case of any such order or judgment which has been made or given, whether before or after the passing of this Act, and not executed at any subsequent time, the court may adjourn the application, or stay or suspend execution on any such order or judgment, or postpone the date of possession for such period or periods as it thinks fit, and subject to such conditions (if any) in regard to payment by the tenant of arrears of rent, rent, or mesne profits and otherwise as the court thinks fit, and, if such conditions are complied with, the court may, if it thinks fit, discharge or rescind any such order or judgment.

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* See 1924 Act, § 1, p. 147, *infra.*

" (3) Where any order or judgment has been made or given before the passing of this Act but not executed, and, in the opinion of the court, the order or judgment would not have been made or given if this Act had been in force at the time when such order or judgment was made or given, the court may, on application by the tenant, rescind or vary such order or judgment in such manner as the court may think fit for the purpose of giving effect to this Act.

" (4) Notwithstanding anything in section one hundred and forty-three of the County Courts Act, 1888, or in section one of the Small Tenements Recovery Act, 1838, every warrant for delivery of possession of, or to enter and give possession of, any dwelling-house to which this Act applies, shall remain in force for three months from the day next after the last day named in the judgment or order for delivery of possession or ejectment, or, in the case of a warrant under the Small Tenements Recovery Act, 1838, from the date of the issue of the warrant, and in either case for such further period or periods, if any, as the court shall from time to time, whether before or after the expiration of such three months, direct.

" (5) An order or judgment against a tenant for the recovery of possession of any dwelling-house or ejectment therefrom under this section shall not affect the right of any sub-tenant to whom the premises or any part thereof have been lawfully sub-let before proceedings for recovery of possession or ejectment were commenced, to retain possession under this section, or be in any way operative against any such sub-tenants.

" (6) Where a landlord has obtained an order or judgment for possession or ejectment under this section on the ground that he requires a dwelling-house for his own occupation, and it is subsequently made to appear to the court that the order or judgment was obtained by misrepresentation or the concealment of material facts, the court may order the landlord to pay to the former tenant such sum as appears sufficient as compensation for damage or loss sustained by that tenant as the result of the order or judgment.

" (7) The provisions of the last preceding subsection shall apply in any case where the landlord has, after the thirty-first day of July, nineteen hundred and twenty-three, obtained an order or judgment for possession or ejectment on any of the grounds specified in paragraph (*d*) of subsection (1) of this section, and it is subsequently made to appear to the court that the order or judgment was obtained by misrepresentation or concealment of material facts, and in any such case the court may, if it thinks fit, in addition to making an order for payment of compensation, by the landlord to the former tenant, direct that the dwelling-house shall not be excluded from this Act by reason of the landlord having come into possession thereof under the said order or judgment, and if such a direction is given, this Act shall apply and be deemed to have applied to the dwelling-house as from the date mentioned in such direction."

5. **Suspension of increase of rent on ground of disrepair.**—(1) Where the tenant of a dwelling-house to which the principal Act applies has obtained from the sanitary authority a certificate that the house is not in a reasonable state of repair, and has served a copy of the certificate upon the landlord, it shall be a good defence to any claim against the tenant for the payment of any increase of rent permitted under paragraph (*c*) or paragraph (*d*) of subsection (1) of section two of the principal Act in respect of any subsequent rental period that the house was not in a reasonable state of repair during that period, and in any proceedings against the tenant for the enforcement of such claim (including proceedings for recovery of possession or ejectment on the ground

AMENDMENT OF PRINCIPAL ACT—*continued.*

of non-payment of rent so far as the rent unpaid includes such increase), the production of the said certificate shall be sufficient evidence that the house was and continues to be in the condition therein mentioned unless the contrary is proved:

Provided that this section shall not apply in any case where and so far as the condition of the house is due to the tenant's neglect or default or breach of express agreement.

(2) When, after the issue of any such certificate, the landlord has executed to the satisfaction of the sanitary authority the repairs which require to be executed in order to put the dwelling-house into a reasonable state of repair, the authority shall, on the application of the landlord and upon payment of a fee of one shilling, issue a report to that effect.

6. **Notice of increase of rent.**—(1) The county court, if satisfied that any error or omission in a notice of intention to increase rent, whether served before or after the passing of this Act, is due to a *bonâ fide* mistake on the part of the landlord, shall have power to amend such notice, by correcting any errors and supplying any omissions therein, which, if not corrected or supplied, would render the notice invalid, on such terms and conditions as respects arrears of rent or otherwise as appear to the court to be just and reasonable, and, if the court so directs, the notice as so amended shall have effect and be deemed to have had effect as a valid notice.

(2) The form of notice in the First Schedule to the principal Act shall be amended by the substitution of the words "date of service of this notice" for the words "date of this notice."

7. **Permitted increases of rent of sub-tenancies.**—(1) Where part of a dwelling-house to which the principal Act applies is lawfully sub-let, and the part so sub-let is also a dwelling-house to which the principal Act applies, then, in addition to any increases permitted by paragraphs (*a*) to (*e*) of subsection (1) of section two of the principal Act, an amount not exceeding ten per cent. of the net rent of the dwelling-house comprised in the sub-tenancy shall be deemed to be a permitted increase in the case of that dwelling-house, and an amount equivalent to five per cent. of the net rent of the dwelling-house comprised in the sub-tenancy shall be deemed to be a permitted increase in the case of the dwelling-house comprised in the tenancy. Subsection (2) of section three of the principal Act shall not apply as respects any increase permitted under this subsection.

(2) Where part of any such dwelling-house is so sub-let, the tenant shall, on being so requested in writing by the landlord, supply him, within fourteen days thereafter, with a statement in writing of any sub-letting, giving particulars of occupancy, including the rent charged, and should the tenant without reasonable excuse fail to do so or supply a statement which is false in any material particulars he shall be liable on summary conviction to a fine not exceeding two pounds.

(3) In subsection (6) of section two of the principal Act the expression "landlord" shall, in relation to a sub-tenancy, be taken to include not only the person who is immediate landlord of the sub-tenant but also the landlord of that person.

8. **Limitation on recovery of overpayments or arrears.**—(1) No increase of rent which becomes payable by reason of an amendment of a notice of increase made by order of the county court under this Act shall be recoverable in respect

of any rental period which ended more than six months before the date of the order.

(2) Any sum paid by a tenant or mortgagor which, under subsection (1) of section fourteen of the principal Act is recoverable by the tenant or mortgagor shall be recoverable at any time within six months from the date of payment but not afterwards, or in the case of a payment made before the passing of this Act, at any time within six months from the passing of this Act but not afterwards.

(3) Nothing in this section shall affect the operation of the Rent Restriction (Notices of Increase) Act, 1923.

9. **Excessive charges for furniture, &c., taken over in connexion with tenancies.**—(1) Where the purchase of any furniture or other articles is required as a condition of the grant, renewal, or continuance of a tenancy or sub-tenancy of a dwelling-house to which the principal Act applies, the price demanded shall, at the request of the person on whom the demand is made, be stated in writing, and, if the price exceeds the reasonable price of the articles, the excess shall be treated as if it were a fine or premium required to be paid as a condition of the grant, renewal, or continuance, and the provisions of section eight of the principal Act, including penal provisions, shall apply accordingly.

(2) Where a tenant who by virtue of the principal Act retains possession of a dwelling-house to which that Act applies requires that furniture or other articles shall be purchased as a condition of giving up possession, the price demanded shall, at the request of the person on whom the demand is made, be stated in writing, and, if the price exceeds the reasonable price of the articles, the excess shall be treated as a sum asked to be paid as a condition of giving up possession, and the provisions of subsection (2) of section fifteen of the principal Act (including penal provisions) shall apply accordingly.

10. **Amendment of provisions of the principal Act as to houses let with furniture, &c.**—(1) For the purposes of proviso (i) to subsection (2) of section twelve of the principal Act (which relates to the exclusion of dwelling-houses from the principal Act in certain circumstances), a dwelling-house shall not be deemed to be bonâ fide let at a rent which includes payments in respect of attendance or the use of furniture unless the amount of rent which is fairly attributable to the attendance or the use of the furniture, regard being had to the value of the same to the tenant, forms a substantial portion of the whole rent.

(2) In sections nine and ten of the principal Act (which relate to limitation of rent of houses let with furniture and penalties for excessive charges for such lettings) the expressions "landlord" and "tenant" shall respectively be substituted for the expressions "lessor" and "lessee."

11. **Power of county court to determine questions as to standard rent, &c.**—(1) The county court shall have power on the application of a landlord or a tenant to determine summarily any questions as to the amount of the rent, standard rent or net rent of any dwelling-house to which the principal Act applies, or as to the increase of rent permitted under that Act or this Part of this Act.

(2) The Lord Chancellor may, by rules and directions made and given under section seventeen of the principal Act, provide for any questions arising under or in connection with the principal Act or this Part of this Act being referred by consent of the parties interested for final determination by the judge or registrar of a county court sitting as an arbitrator or by an arbitrator appointed by such judge.

PART II.

RESTRICTIONS AFTER EXPIRY OF PRINCIPAL ACT.

12. **Restriction on right to possession in certain cases after the expiry of the principal Act.**—(1) If proceedings are taken against the person who on the twenty-fourth day of June, nineteen hundred and twenty-five, is tenant of a dwelling-house to which the principal Act then applies (hereinafter referred to as "the sitting tenant") for the recovery of possession of the dwelling-house or for the ejectment of the tenant therefrom at any time after that day, should it appear to the court that the proceedings are harsh or oppressive or that exceptional hardship would be caused to the sitting tenant by the making or giving of an order or judgment for possession or ejectment, the court may refuse to make or give such an order or judgment or may adjourn the application for or stay or suspend execution of any such order or judgment or postpone the date of possession for such period or periods, and subject to such conditions as it thinks proper, and, if such conditions are complied with, the court may, if it thinks fit, discharge or rescind any such order or judgment.

(2) For the purpose of the exercise of its jurisdiction under this section, the court may direct that the tenancy of the sitting tenant shall be treated as a subsisting tenancy notwithstanding the determination of the same by any notice to quit or similar notice or otherwise and may set aside and annul any such notice accordingly, and shall have power to determine what increase of rent (if any) is fair and reasonable, regard being had to the character and condition of the dwelling-house and the rents of similar dwelling-houses in the locality.

(3) The court shall not exercise any of the powers given to it under the foregoing provisions of this section in any case where it is satisfied that greater hardship would be caused to the landlord by the exercise of the power than would be caused to the tenant by the refusal to exercise it.

(4) In any such proceedings an order or judgment for possession or ejectment against the sitting tenant of the dwelling-house shall not, unless the court otherwise directs, be operative against a sitting tenant of a part of the dwelling-house which, on the twenty-fourth day of June, nineteen hundred and twenty-five, is lawfully sub-let to him and is a separate dwelling-house to which the principal Act applies, and the court shall, in relation to that part of the dwelling-house and the sitting tenant thereof, have all the like powers and jurisdiction as it has in relation to the whole dwelling-house and the sitting tenant thereof.

(5) In order to assist the court in the determination of questions arising under this part of this Act in relation to the rent, character or condition of dwelling-houses, the Minister of Health may establish reference committees to whom such questions may be referred by the court for consideration and report.

(6) The foregoing provisions of this section shall not apply to proceedings against a sitting tenant under the Small Tenements Recovery Act, 1838, and any such proceedings shall, on the application of the sitting tenant, be discontinued, subject to any provision that may be made by rules under this Part of this Act for transfer to the county court.

13. **Reduction of rent pending the execution of repairs.**—(1) If the county court on the application of a sitting tenant is satisfied by the production of a certificate of the sanitary authority and such further evidence (if any) as may be adduced that the dwelling-house is not in a reasonable state of repair and that the condition of the dwelling-house is not due to the tenant's neglect or

default or breach of express agreement, the court may order that the rent shall be reduced until the court is satisfied on the report of the sanitary authority or otherwise that the necessary repairs (other than any repairs for which the tenant is liable) have been executed, and subject to the terms of the order the rent shall be payable at such reduced rate as may be specified therein until the court is so satisfied.

(2) The powers of the county court under this section may be exercised by the court in any proceedings against a sitting tenant to which the last preceding section of this Act applies.

14. **Restriction on calling in of mortgages.**—(1) Where a dwelling-house in the occupation of a sitting tenant is subject to a mortgage to which the principal Act applied, the county court may, on the application of the landlord, make an order restraining the mortgagee from calling in his mortgage or taking steps for enforcing his security or for recovering the principal money thereby secured, if it is satisfied that such calling in, enforcement or recovery would cause exceptional hardship to the landlord. The county court may, on the application of the mortgagee or landlord rescind or vary any order so made if satisfied that by reason of any material change in circumstances, rescission or variation is necessary or proper.

(2) The restrictions imposed on a mortgagee by an order under this section may be imposed subject to such conditions as regards increase of interest or otherwise and for such time as appears to the court to be proper, but so nevertheless that the restrictions shall cease to be operative if at any time after the making of the order—

(*a*) interest is more than twenty-one days in arrear; or

(*b*) any covenant by the mortgagor (other than the covenant for the repayment of the principal money secured) is broken or not performed; or

(*c*) the mortgagor fails to keep the property in a proper state of repair or to pay the interest and instalments of principal recoverable under any prior encumbrance; or

(*d*) the sitting tenant ceases to be tenant of the dwelling-house.

(3) This section shall not apply to a mortgage where the principal money secured thereby is repayable by means of periodical instalments extending over a term of not less than ten years from the creation of the mortgage.

15. **Regulations as to reference committees.**—(1) The constitution and procedure of reference committees established under this Part of this Act shall be such as may be prescribed by regulations made by the Minister of Health.

(2) In addition to any questions that may be referred to a reference committee by the county court under this Part of this Act, provision may be made by the regulations for the reference to and determination by a reference committee of any questions in relation to the rent payable or to be paid by a sitting tenant which may be submitted to them by the tenant and landlord.

(3) Before any regulation under this section is made, it shall be laid in draft before both Houses of Parliament, and such regulation shall not be made unless both Houses by resolution approve the draft, either without modification or addition or with modifications or additions to which both Houses agree, but upon such approval being given the Minister of Health may make the regulation in the form in which it has been approved, and the regulation on being so made shall be of full force and effect.

16. **Rules as to procedure.**—The Lord Chancellor may make such rules and

RESTRICTIONS AFTER EXPIRY OF PRINCIPAL ACT—*continued.*

give such directions as he thinks fit for the purpose of giving full effect to the provisions of this Part of this Act relative to legal proceedings.

17. **Duration of Part II.**—This Part of this Act shall continue in force until the twenty-fourth day of June, nineteen hundred and thirty:

Provided that, if a resolution is passed by both Houses of Parliament for the repeal of this Part of this Act on some earlier date, it shall be lawful for His Majesty in Council to repeal this Part of this Act on such date as may be specified in that behalf in the resolution.

PART III.

GENERAL.

18. **Certificates of sanitary authorities and definition of repairs.**—(1) For the purposes of the principal Act and this Act, a certificate of a sanitary authority as to the condition of a dwelling-house shall specify what works (if any) require to be executed in order to put the dwelling-house into a reasonable state of repair, and on any application to a sanitary authority for a certificate or report for the purposes aforesaid a fee of one shilling shall be payable, but if the authority, as a result of such application, issues a certificate to a tenant, the tenant shall be entitled to deduct the fee from any subsequent payment of rent.

(2) On any application to a county agricultural committee for a certificate for the purpose of paragraph (ii) of subsection (1) of section five of the principal Act, a fee shall be payable by the applicant to the county agricultural committee of such amount as the Minister of Agriculture and Fisheries shall by regulation determine.

(3) An instrument purporting to be a certificate or report of a sanitary authority or of a county agricultural committee and to be signed by an officer of the authority or committee shall, without further proof, be taken to be a certificate or report of the authority or committee unless the contrary is proved.

(4) A sanitary authority may appoint a committee for the purposes of the principal Act and this Act, and may delegate, with or without restrictions, to such committee or to an existing committee of the authority all or any of the powers of the authority under the principal Act or this Act.

(5) For the purposes of this Act, the expression "repairs" means any repairs required for the purpose of keeping premises in good and tenantable repair, and any premises in such a state shall be deemed to be in a reasonable state of repair, and the landlord shall be deemed to be responsible for any repairs for which the tenant is under no express liability.

19. **Application to Scotland.**—This Act shall apply to Scotland subject to the following modifications:—

(*a*) The twenty-eighth day of May shall be substituted for the twenty-fourth day of June; the Scottish Board of Health shall be substituted for the Minister of Health; references to the registrar of a county court shall not apply; and "exciseable liquor" shall be substituted for "intoxicating liquor";

(*b*) For removing doubts, it is hereby declared that nothing in the principal Act affects the operation of the House Letting and Rating (Scotland) Act, 1920, and the reference in subsection (2) of section one of the last

mentioned Act to the provisions of Acts repealed by the principal Act shall be construed as a reference to the provisions of section three of the principal Act.

20. **Short title, construction and extent.**—This Act may be cited as the Rent and Mortgage Interest Restrictions Act, 1923, and shall be construed as one with the principal Act, save that this Act shall not apply to Ireland, and the principal Act, the Increase of Rent and Mortgage Interest Restrictions (Continuance) Act, 1923, the Rent Restrictions (Notices of Increase) Act, 1923, and this Act may be cited together as the Rent and Mortgage Interest Restrictions Acts, 1920 and 1923.

E.

Prevention of Eviction Act, 1924.

(14 & 15 GEO. 5, CH. 18.)

An Act to prevent unreasonable eviction of tenants.

[14th July, 1924.]

BE it enacted, &c.

1. **Amendment of 13 & 14 Geo. 5, c. 32, s. 4, ss. (1).**—Paragraphs (iv) and (v) of subsection (1) of the section which by section four of the Rent and Mortgage Interest Restrictions Act, 1923, is substituted for section five of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, are hereby repealed as respects pending as well as future proceedings, and the following paragraph shall be substituted therefor :

(iv) Where the dwelling-house is reasonably required by the landlord (not being a landlord who has become landlord by purchasing the dwelling-house or any interest therein after the fifth day of May, nineteen hundred and twenty-four) for occupation as a residence for himself or for any son or daughter of his over eighteen years of age and the court is satisfied, having regard to all the circumstances of the case, including any alternative accommodation available for the landlord or the tenant, that greater hardship would be caused by refusing to grant an order or judgment for possession than by granting it.

2. **Application of Act to pending proceedings.**—(1) Where any order or judgment has been made or given before the passing of this Act but not executed, and in the opinion of the court the order or judgment would not have been made or given if this Act had been in force at the time when such order or judgment was made or given, the court, on application by the tenant, may rescind or vary the order or judgment in such manner and subject to such conditions as the court shall think fit for the purpose of giving effect to this Act.

(2) Where a landlord has, on or after the fifteenth day of April, nineteen hundred and twenty-four, taken possession of a dwelling-house under a judgment or order so rescinded as aforesaid, such possession shall not in any case exclude the dwelling-house from the operation of the Rent and Mortgage Interest (Restrictions) Acts, 1920 and 1923.

3. **Short title.**—This Act may be cited as the Prevention of Eviction Act, 1924, and shall be construed as one with the Rent and Mortgage Interest (Restrictions) Acts, 1920 and 1923, and those Acts and this Act may be cited together as the Rent and Mortgage Interest (Restrictions) Acts, 1920 to 1924.

F.

Rent and Mortgage Interest (Restrictions Continuation) Act, 1925.

(15 & 16 GEO. 5, CH. 32.)

An Act to prolong the duration of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, as amended by any subsequent enactment, and of Part II. of the Rent and Mortgage Interest Restrictions Act, 1923, and for purposes consequential thereon.

[28th May, 1925.]

BE it enacted, &c.

1. **Prolongation of 10 & 11 Geo. 5, c. 17, and Part II. of 13 & 14 Geo. 5, c. 32.**—(1) The Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, as amended by any subsequent enactment, shall continue in force until the twenty-fifth day of December, nineteen hundred and twenty-seven, and in Scotland until the twenty-eighth day of May, nineteen hundred and twenty-eight.

(2) Part II. of the Rent and Mortgage Interest Restrictions Act, 1923, shall continue in force until five years after the expiration of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, so amended as aforesaid.

(3) Accordingly the Rent and Mortgage Interest Restrictions Act, 1923, shall have effect as if—

(*a*) in section one thereof for the reference to the twenty-fourth day of June, nineteen hundred and twenty-five, there were substituted a reference to the twenty-fifth day of December, nineteen hundred and twenty-seven;

(*b*) in section two thereof for the words "after the twenty-fourth day of June, nineteen hundred and twenty-six" there were substituted the words "not earlier than one year after the date fixed at the time at which the lease is granted for the expiration of the principal Act";

(*c*) in section seventeen thereof for the reference to the twenty-fourth day of June, nineteen hundred and thirty, there were substituted a reference to five years after the expiration of the principal Act;

(*d*) in section twelve thereof for the references to the twenty-fourth day of June, nineteen hundred and twenty-five, there were substituted references to the day at the end of which the principal Act expires;

(*e*) in section nineteen thereof at the beginning of paragraph (*a*) there were inserted the words "the twenty-eighth day of May, nineteen hundred and twenty-eight, shall be substituted for the twenty-fifth day of December, nineteen hundred and twenty-seven."

2. **Short title.**—This Act may be cited as the Rent and Mortgage Interest (Restrictions Continuation) Act, 1925; and the Rent and Mortgage Interest (Restrictions) Acts, 1920 to 1924, and this Act may be cited together as the Rent and Mortgage Interest (Restrictions) Acts, 1920 to 1925.

APPENDIX II.

STATUTES REPEALED.

A.

Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915.

(5 & 6 Geo. 5, Ch. 97.)

An Act to restrict, in connection with the present War, the increase of the rent of small dwelling-houses and the increase of the rate of interest on, and the calling in of, securities on such dwelling-houses.

[23rd December, 1915.]

Be it enacted, &c.

1.—(1) Where the rent of a dwelling-house to which this Act applies, or the rate of interest on a mortgage to which this Act applies, has been, since the commencement of the present war, or is hereafter during the continuance of this Act, increased above the standard rent or the standard rate of interest as herein-after defined, the amount by which the rent or interest payable exceeds the amount which would have been payable had the increase not been made shall, notwithstanding any agreement to the contrary, be irrecoverable:

Provided that—

(i) This subsection shall not apply to any rent or mortgage interest which accrued due before the twenty-fifth day of November nineteen hundred and fifteen; and

(ii) Where the landlord has since the commencement of the present war incurred, or during the continuance of this Act incurs, expenditure on the improvement or structural alteration of a dwelling-house (not including expenditure on decoration or repairs), an increase of rent at a rate not exceeding six per cent. per annum on the amount so expended shall not be deemed to be an increase for the purposes of this Act; and

(iii) Any transfer to a tenant of any burden or liability previously borne by the landlord shall for the purposes of this Act be treated as an alteration of rent, and where, as the result of such a transfer, the terms on which a dwelling-house is held are on the whole less favourable to the tenant than the previous terms the rent shall be deemed to be increased, whether or not the sum periodically payable by way of rent is increased, and any increase of rent in respect of any transfer to a landlord of any burden or liability previously borne by the tenant where, as the result of such transfer, the terms on which a dwelling-house is held are on the whole more favourable to the tenant than the previous terms shall be deemed not to be an increase of rent for the purposes of this Act, and if any question arises under this proviso the question shall be determined by the county court, whose decision shall be final and conclusive; and

STATUTES REPEALED—*continued.*

(iv) Where the landlord pays the rates chargeable on, or which but for the enactments relating to compounding would be chargeable on, the occupier of any dwelling-house, an increase of the rent of the dwelling-house shall not be deemed to be an increase for the purposes of this Act if the amount of the increase does not exceed any increase in the amount for the time being payable by the landlord in respect of such rates over the corresponding amount paid in respect of the yearly, half yearly or other period which included the third day of August nineteen hundred and fourteen, and for the purposes of this proviso the expression " rates " includes water rents and charges; and

(v) Where the rate of mortgage interest has been increased in compliance with, or in consequence of, a notice in writing demanding either repayment of the mortgage or an increased rate of interest given prior to the fourth day of August nineteen hundred and fourteen, such increase shall not be deemed to be an increase for the purposes of this Act; and

(vi) Wherever an increase of rent is by this Act permitted, no such increase shall be due or recoverable until the expiry of four clear weeks after the landlord has served upon the tenant a notice in writing of his intention to increase the rent, accompanied—

(*a*) where the increase of rent is on account of such expenditure as is mentioned in proviso (ii) to this subsection, by a statement of the improvements or alterations effected and of their cost; and

(*b*) where the increase of rent is on account of an increase in rates, by a statement showing particulars of the increased amount charged in respect of rates on the dwelling-house; and

(*c*) where such a notice has been served on any tenant the increase may be continued without service of any fresh notice on any subsequent tenant.

(2) A person shall not in consideration of the grant, renewal, or continuance of a tenancy of any dwelling-house to which this Act applies require the payment of any fine, premium, or other like sum in addition to the rent, and where any such payment has been made in respect of any such dwelling-house after the twenty-fifth day of November nineteen hundred and fifteen, then the amount shall be recoverable by the tenant by whom it was made from the landlord, and may without prejudice to any other method of recovery be deducted from any rent payable by him to the landlord, but this provision shall not apply to any payment under an agreement entered into before the fourth day of August nineteen hundred and fourteen.

(3) No order for the recovery of possession of a dwelling-house to which this Act applies or for the ejectment of a tenant therefrom shall be made so long as the tenant continues to pay rent at the agreed rate as modified by this Act and performs the other conditions of the tenancy, except on the ground that the tenant has committed waste or has been guilty of conduct which is a nuisance or an annoyance to adjoining or neighbouring occupiers, or that the premises are reasonably required by the landlord for the occupation of himself or some other person in his employ, or in the employ of some tenant from him, or on some other ground which may be deemed satisfactory by the court making such order, and where such order has been made but not executed before the passing of this Act the court by which the order was made may, if it is of opinion that the order would not have been made if this Act had been in

operation at the date of the making of the order, rescind or vary the order in such manner as the court may think fit for the purpose of giving effect to this Act.

(4) It shall not be lawful for any mortgagee under a mortgage to which this Act applies, during the continuance of this Act, and so long as interest at the standard rate is paid and is not more than twenty-one days in arrear, and the covenants by the mortgagor (other than the covenant for the repayment of the principal money secured) are performed and observed, and so long as the mortgagor keeps the property in a proper state of repair and pays all interest and instalments of principal recoverable under any prior encumbrance, to call in his mortgage or to take any steps for exercising any right of foreclosure or sale, or for otherwise enforcing his security or for recovering the principal money thereby secured :

Provided that this provision shall not apply to a mortgage where the principal money secured thereby is repayable by means of periodical instalments extending over a term of not less than ten years from the creation of the mortgage, nor shall this provision affect any power of sale exerciseable by a mortgagee who was at the twenty-fifth day of November nineteen hundred and fifteen a mortgagee in possession, or in cases where the mortgagor consents to the exercise by the mortgagee of the powers conferred by the mortgage :

Provided also that if, in the case of a mortgage of a leasehold interest, the mortgagee satisfies the county court that his security is seriously diminishing in value or is otherwise in jeopardy, and that for that reason it is reasonable that the mortgage should be called in and enforced, the court may by order authorise him to call in and enforce the same, and thereupon this subsection shall not apply to such mortgage.

2.—(1) For the purposes of this Act except where the context otherwise requires :—

(*a*) The expression " standard rent " means the rent at which the dwelling-house was let on the third day of August nineteen hundred and fourteen, or, where the dwelling-house was not let on that date, the rent at which it was last let before that date, or, in the case of a dwelling-house which was first let after the said third day of August, the rent at which it was first let :

(*b*) The expression " standard rate of interest " means in the case of a mortgage in force on the third day of August nineteen hundred and fourteen, the rate of interest payable at that date, or, in the case of a mortgage created since that date, the original rate of interest :

(*c*) The expression " rateable value " means the rateable value on the third day of August nineteen hundred and fourteen, or, in the case of a house or part of a house first assessed after that date, the rateable value at which it was first assessed :

(d) The expressions " landlord," " tenant," " mortgagee," and " mortgagor " include any person from time to time deriving title under the original landlord, tenant, mortgagee, or mortgagor :

(*e*) The expression " mortgage " includes a land charge under the Land Transfer Acts, 1875 and 1897.

(2) This Act shall apply to a house or a part of a house let as a separate dwelling where such letting does not include any land other than the site of the dwelling-house and a garden or other premises within the curtilage of the dwelling-house, and where either the annual amount of the standard rent or the rateable value of the house or part of the house does not exceed—

STATUTES REPEALED—*continued.*

(*a*) in the case of a house situate in the metropolitan police district, including therein the city of London, thirty-five pounds;

(*b*) in the case of a house situate in Scotland, thirty pounds; and

(*c*) in the case of a house situate elsewhere, twenty-six pounds;

and every such house or part of a house shall be deemed to be a dwelling-house to which this Act applies: Provided that this Act shall not apply to a dwelling-house let at a rent which includes payments in respect of board, attendance, or use of furniture.

(3) Where, for the purpose of determining the standard rent or rateable value of a dwelling-house to which this Act applies, it is necessary to apportion the rent at the date in relation to which the standard rent is to be fixed or the rateable value of the property in which that dwelling-house is comprised, a county court may, on application by either party, make such apportionment as seems just, and the decision of the court as to the amount to be apportioned to the dwelling-house shall be final and conclusive.

(4) Subject to the provisions of this Act, this Act shall apply to every mortgage where the mortgaged property consists of or comprises one or more dwelling-houses to which this Act applies, or any interest therein except that it shall not apply—

(*a*) to any mortgage comprising one or more dwelling-houses to which this Act applies and other land if the rateable value of such dwelling-houses is less than one-tenth of the rateable value of the whole of the land comprised in the mortgage, or

(*b*) to an equitable charge by deposit of title deeds or otherwise.

(5) Where this Act has become applicable to any dwelling-house or any mortgage thereon it shall continue to apply thereto whether or not the dwelling-house continues to be a dwelling-house to which this Act applies.

(6) Where the standard rent payable in respect of any tenancy of a dwelling-house is less than two-thirds of the rateable value thereof, this Act shall not apply to that rent or tenancy nor to any mortgage by the landlord from whom the tenancy is held of his interest in the dwelling-house.

3. The Lord Chancellor may make such rules and give such directions as he thinks fit for the purpose of giving effect to this Act, and may by those rules or directions provide for any proceedings for the purposes of this Act being conducted so far as desirable in private and for the remission of any fees.

4.—(1) This Act shall apply to Scotland, subject to the following modifications:—

"Mortgage and incumbrance" mean a heritable security; "fine" means grassum or consideration other than rent; "mortgagor" and "mortgagee" mean respectively the debtor and the creditor in a heritable security; "covenant" means obligation; "mortgaged property" means the heritable subject or subjects included in a heritable security; "rateable value" means yearly value according to the valuation roll; "rateable value on the third day of August nineteen hundred and fourteen" means yearly value according to the valuation roll for the year ending fifteenth day of May nineteen hundred and fifteen; "assessed" means entered in the valuation roll; "committed waste" means "wilfully destroyed the property"; "land" means land and heritages; "enactments relating to compounding" include the House-letting and Rating (Scotland) Act,

1911; "rate" means assessment as defined in the last-mentioned Act; "Lord Chancellor" means the Court of Session; "rules" means act of sederunt; and "county court" means the sheriff.

(2) This Act shall apply to Ireland subject to the following modifications :—

(*a*) A reference to the Lord Chancellor of Ireland shall be substituted for the reference to the Lord Chancellor;

(*b*) The expression "mortgage" includes a charge by registered disposition under the Local Registration of Title (Ireland) Act, 1891;

(*c*) The expression "rateable value" means the annual rateable value under the Irish Valuation Acts : Provided that where part of a house let as a separate dwelling is not separately valued under those Acts, the Commissioner of Valuation and Boundary Surveyor may on the application of the landlord or tenant make such apportionment of the rateable value of the whole house as seems just, and his decision as to the amount to be apportioned to the part of the house shall be final and conclusive, and that amount shall be taken to be the rateable value of the part of the house for the purposes of this Act but not further or otherwise.

5.—(1) This Act may be cited as the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915.

(2) This Act shall continue in force during the continuance of the present war and for a period of six months thereafter and no longer, but the expiration of this Act shall not render recoverable any rent or interest which during the continuance thereof was irrecoverable or affect the right of a tenant to recover any sum which during the continuance thereof was under this Act recoverable by him.

B.

Increase of Rent, &c. (Amendment) Act, 1918.

(8 GEO. 5, CH. 7.)

An Act to restrict the meaning of the expression landlord in subsection (3) of section one of the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915.

[2nd May, 1918.]

BE it enacted, &c.

1. Subsection (3) of section one of the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915, shall have effect as if at the end thereof the following provision was inserted :—

"For the purposes of this subsection the expression 'landlord' shall not include any person who since the thirtieth day of September nineteen hundred and seventeen has become landlord by the acquisition of the dwelling-house or any interest therein otherwise than by the devolution thereof to him under a settlement made before the said date, or under a testamentary disposition or an intestacy,"

and the provisions of the said subsection with respect to orders made but not executed before the passing of that Act, shall apply to orders made but not executed before the passing of this Act, as if this Act had been substituted for that Act in the said subsection :

Provided that this enactment shall not apply in any case where the court

STATUTES REPEALED—*continued.*

is satisfied by certificate given by or on behalf of the Board of Agriculture and Fisheries (or as regards premises in Scotland by the Board of Agriculture for Scotland, or in Ireland the Department of Agriculture and Technical Instruction for Ireland) that the premises in question are required for the occupation of a person engaged or employed in agricultural work of urgent national importance.

2. This Act may be cited as the Increase of Rent, &c. (Amendment) Act, 1918.

C.

Increase of Rent and Mortgage Interest (Restrictions) Act, 1919.

(9 GEO. 5, CH. 7.)

An Act to extend, amend and prolong the duration of the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915, and the enactments amending that Act.

[2nd April, 1919.]

BE it enacted, &c.

1. The Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915 (hereinafter referred to as the " principal Act "), and the enactments amending that Act, shall continue in force until Lady Day nineteen hundred and twenty-one, but during the period (hereinafter referred to as " the extended period ") between the time when but for this Act the principal Act would have expired and the said Lady Day the principal Act shall have effect subject to the modifications contained in the two next succeeding sections.

2.—(1) An increase in the rent of a dwelling-house to which the principal Act applies payable in respect of the extended period or any part thereof which would but for the principal Act be recoverable, shall be recoverable if or so far as the amount of the increase does not exceed ten per centum of the standard rent :

Provided that no such increase shall be due or recoverable if the sanitary authority of the district in which the house is situate on the application of the tenant certifies that the house is not reasonably fit for human habitation or is not kept in a reasonable state of repair, nor in any case until or in respect of any period prior to the expiry of four clear weeks after the landlord has served upon the tenant a notice in writing of his intention to increase the rent, and informing the tenant of his right to apply to the sanitary authority for such a certificate as aforesaid.

(2) On any such application to a sanitary authority a fee of one shilling shall be payable, but if the authority, as a result of the application, issues such a certificate as aforesaid the tenant shall be entitled to deduct the amount of the fee from any subsequent payment of rent.

(3) The increase of rent permitted by this section shall be in addition to any increase permitted by section one of the principal Act.

3. Nothing in the principal Act shall prevent an increase in the rate of interest payable in respect of the extended period on a mortgage to which the principal Act applies, if the increase does not exceed one half per centum per annum, and the rate when so increased does not exceed five per centum per annum, and subsection (4) of section one of the principal Act shall apply as

if the reference therein to the standard rate included a reference to such increased rate.

4. As from the passing of this Act, the principal Act and the enactments amending that Act shall extend to houses or parts of houses let as separate dwellings where such letting does not include any land other than the site of the dwelling-house and a garden or other premises within the curtilage of the dwelling-house, and where—

(*a*) in the case of a house situated in the metropolitan police district, including the City of London, both the annual amount of the standard rent and the rateable value of the house or part of the house exceed thirty-five pounds, and neither exceeds seventy pounds;

(*b*) in the case of a house situated in Scotland, both the annual amount of the standard rent and the rateable value of the house or part of the house exceed thirty pounds, and neither exceeds sixty pounds;

(*c*) in the case of a house situated elsewhere, both the annual amount of the standard rent and the rateable value of the house or part of the house exceed twenty-six pounds, and neither exceeds fifty-two pounds;

and shall also extend to mortgages (not being mortgages to which the principal Act as originally enacted applies), where the mortgaged property consists of or comprises one or more of such dwelling-houses as aforesaid or any interest therein, subject, however, to the exceptions mentioned in subsection (4) of section two of the principal Act, but in the application to those houses and mortgages the principal Act and the enactments amending that Act shall have effect, subject to the following modifications :—

(i) for subsection (1) of section one of the principal Act, exclusive of the provisoes to that subsection, the following provisions shall be substituted :—

> Where the rent of a dwelling-house to which this Act applies or the rate of interest on a mortgage to which this Act applies has been since the twenty-fifth day of December nineteen hundred and eighteen, or is hereafter increased, and such increase would apart from this Act have been recoverable, then, if the increased rent exceeds by more than ten per centum the standard rent, or the increased rate of interest exceeds by more than one half per centum per annum the standard rate, the amount of such excess above the said ten per centum or one half per centum, as the case may be, shall, notwithstanding any agreement to the contrary, be irrecoverable from the tenant or the mortgagor, as the case may be, and, if paid, may be recovered by the tenant or mortgagor in the manner and subject to the provisions of subsection (1) of section five of the Courts (Emergency Powers) Act, 1917;

(ii) in proviso (i) to subsection (1) and subsections (2) and (4) of section one of the principal Act the fourth day of March nineteen hundred and nineteen shall be substituted for the twenty-fifth day of November nineteen hundred and fifteen;

(iii) in subsection (3) of section one of the principal Act references to the date of the passing of the principal Act shall be construed as references to the date of passing of this Act;

(iv) in subsection (4) of section one of the principal Act for the reference to the standard rate there shall be substituted a reference to the rate permitted by this section;

STATUTES REPEALED—*continued.*

(v) at the end of paragraph (*a*) of subsection (1) of section two of the principal Act there shall be inserted the following proviso :—

Provided that, if the rateable value of the dwelling-house on the said third day of August exceeds the standard rent as so defined, that rateable value shall, as respects that house, be deemed to be the standard rent.

5.—(1) A landlord of a house to which the principal Act, either as originally enacted or as extended by this Act, applies shall, on being so requested by the tenant of the house, furnish to him a statement as to what is the standard rent of the house, and if he fails within fourteen days to do so, or furnishes a statement which is false in any material particular, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding ten pounds.

(2) Where a person who has, since the thirtieth day of September nineteen hundred and seventeen, purchased a house to which the principal Act, either as originally enacted or as extended by this Act, applies, requires the house for his own occupation or that of some person in his employ, or in the employ of some tenant from him, nothing in the Increase of Rent, &c. (Amendment) Act, 1918, shall be construed as preventing the court from making an order for the recovery of possession of the house, if, after considering all the circumstances of the case, including especially the alternative accommodation available for the tenant, the court considers it reasonable to make such an order.

(3) The principal Act, both as originally enacted and as extended by this Act, shall have effect as if in proviso (vi) to subsection (1) of section one of that Act after the word " until " there were inserted the words " or in respect of any period prior to."

(4) Any rooms in a dwelling-house the subject of a separate letting as a dwelling shall, for the purposes of the principal Act and this Act, be treated as a part of a house let as a separate dwelling.

6.—(1) Where the occupier of a dwelling-house to which the principal Act, either as originally enacted or as extended by this Act, applies, lets, or has, before the passing of this Act, let the house or any part thereof at a rent which includes payment in respect of the use of furniture, and it is proved to the satisfaction of the county court on the application of the lessee that the rent charged yields to the occupier a profit more than twenty-five per centum in excess of the normal profit as hereinafter defined, the court may order that the rent, so far as it exceeds such sum as would yield such normal profit and twenty-five per centum, shall be irrecoverable, and that the amount of any payment of rent in excess of such sum which may have been made in respect of any period after the passing of this Act, shall be repaid to the lessee, and, without prejudice to any other method of recovery, may be recovered by him by means of deductions from any subsequent payments of rent.

(2) For the purpose of this section " normal profit " means the profit which might reasonably have been obtained from a similar letting in the year ending on the third day of August, nineteen hundred and fourteen.

7. At the end of paragraph (*a*) of subsection (1) of section two of the principal Act, the following words shall be inserted :—

Provided that, in the case of any dwelling-house let at a progressive rent payable under a tenancy agreement or lease, the maximum rent payable under such tenancy agreement or lease shall be the standard rent.

8. Neither the principal Act nor this Act shall apply to houses erected after or in course of erection at the passing of this Act.

9. In the application of this Act to Scotland—

(*a*) the twenty-eighth day of May shall be substituted for Lady Day and the local authority under the Public Health (Scotland) Act, 1897, shall be substituted for the sanitary authority:

(*b*) as from the commencement of the extended period the principal Act shall be amended by the insertion in proviso (iv) of subsection (1) of section one, after the word "dwelling-house" where first occurring therein, of the words "or where by the law of Scotland owners' rates are chargeable on the landlord of any dwelling-house."

10. In the application of this Act to Ireland—

(*a*) the first day of May shall be substituted for Lady Day in the case of tenancies where the former day is the gale day;

(*b*) the medical officer of health of a dispensary district shall be substituted for the sanitary authority in section two of this Act, and the issue of certificates and the payment of fees in connexion with applications by tenants under the said section shall be subject to regulations to be made by the Local Government Board for Ireland.

11. This Act may be cited as the Increase of Rent and Mortgage Interest (Restrictions) Act, 1919, and shall be construed as one with the principal Act.

D.

Increase of Rent, &c. (Amendment) Act, 1919.

(9 & 10 GEO. 5, CH. 90.)

An Act to amend the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915, and the enactments amending that Act, in relation to orders for possession and ejectment.

[23rd December, 1919.]

BE it enacted, &c.

1.—(1) After the passing of this Act no order or judgment for the recovery of possession of a dwelling-house to which the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915 (hereinafter called the principal Act) or any of the Acts amending the same applies, or for the ejectment of a tenant therefrom, shall be made or given, so long as the tenant continues to pay rent at the agreed rate as modified by the principal Act or any of the Acts amending the same and performs the other conditions of the tenancy, unless—

(*a*) the tenant has committed waste or has been guilty of conduct which is a nuisance or an annoyance to adjoining or neighbouring occupiers, and the court considers it reasonable to make such an order or give such judgment; or

(*b*) the tenant, by sub-letting the dwelling-house or any part thereof, or by taking in lodgers, is making a profit which, having regard to the rent paid by the tenant, is unreasonable and the court considers it reasonable to make such an order or give such judgment; or

(*c*) the premises are reasonably required by the landlord for the occupation of himself or some other person in his employ, or in the employ of some tenant from him, and the court, after considering all the circumstances of the case, including especially the alternative accom-

STATUTES REPEALED—*continued.*

modation available for the tenant, considers it reasonable to make such an order or give such judgment.

(2) At the time of making any order or giving any judgment for the recovery of possession of any such dwelling-house or for the ejectment of a tenant therefrom, or in the case of any such order or judgment which has been made or given, whether before or after the passing of this Act, and not executed, at any subsequent time, the court may, if the order or judgment was made or given on the ground that the premises were reasonably required as aforesaid, stay or suspend execution thereof, or postpone the date of possession, for such period or periods as it shall think fit, either unconditionally or subject to such conditions in regard to payment by the tenant of rent or mesne profits and otherwise as the court shall think fit, and, if such conditions are complied with, the court may, if it shall think fit, discharge or rescind such order or judgment.

(3) Where any order or judgment has been made or given before the passing of this Act, but not executed, and in the opinion of the court the order or judgment would not have been made or given if this Act had been in force at the time when such order or judgment was made or given, the court may, on application by the tenant, rescind or vary such order or judgment in such manner as the court may think fit for the purpose of giving effect to this Act.

(4) Notwithstanding anything in section one hundred and forty-three of the County Courts Act, 1888, every warrant for delivery of possession of a dwelling-house to which the principal Act or any Act amending the same applies, shall remain in force for three months from the day next after the last day named in the judgment or order for delivery of possession or ejectment, and for such period or periods, if any, as the court shall from time to time, whether before or after the expiration of such three months, direct.

(5) This Act shall not apply to a dwelling-house let at a rent which includes payments in respect of board, attendance, or use of furniture.

(6) In the application of this section to Scotland a reference to profits shall be substituted for the reference to mesne profits.

2.—(1) This Act may be cited as the Increase of Rent, &c. (Amendment) Act, 1919, and shall remain in force until the first day of July nineteen hundred and twenty, and shall be construed as one with the principal Act.

(2) The enactments set out in the schedule to this Act are hereby repealed to the extent specified in the third column of that schedule.

SCHEDULE.

Session and Chapter.	Short Title.	Extent of Repeal.
5 & 6 Geo. 5. c. 97.	Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915.	S. 1 (3).
8 Geo. 5. c. 7.	Increase of Rent, &c. (Amendment) Act, 1918.	The whole Act.
9 Geo. 5. c. 7.	Increase of Rent and Mortgage Interest (Restrictions) Act, 1919.	S. 5 (2).

APPENDIX III.

STATUTORY RULES AND ORDERS NOW IN FORCE.

A.

STATUTORY RULES AND ORDERS, 1920.

No. $\frac{1261}{\text{L. 37.}}$

Increase of Rent and Mortgage Interest (Restrictions), England.

COUNTY COURT PROCEDURE.

THE INCREASE OF RENT AND MORTGAGE INTEREST (RESTRICTIONS) RULES, 1920, DATED JULY 9, 1920, MADE BY THE LORD CHANCELLOR UNDER THE INCREASE OF RENT AND MORTGAGE INTEREST (RESTRICTIONS) ACT, 1920 (10 & 11 GEO. 5. C. 17).

PRELIMINARY.

The following Rules under the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920 (in these Rules referred to as the Act), shall apply to the County Courts and to the City of London Court, which shall for the purposes of these Rules be deemed to be a county court.

Rule 3 of these Rules, as to applications under the Courts (Emergency Powers) Act, 1914, shall apply also to the High Court; and the rules made under that Act shall have effect subject to that Rule.

These Rules may be cited as the Increase of Rent and Mortgage Interest (Restrictions) Rules, 1920, and shall come into operation on the 15th day of July, 1920.

On the coming into operation of these Rules the following Rules, viz. :—

The Increase of Rent and Mortgage Interest (War Restrictions) Rules, 1916, dated the 29th January, 1916, and the like Rules, 1919, dated the 21st May, 1919, shall be annulled without prejudice to anything done thereunder, and these Rules shall apply to all proceedings pending under the Rules hereby annulled on the day when these Rules come into operation.

STATUTORY RULES AND ORDERS NOW IN FORCE—*continued.*

APPLICATIONS UNDER SECTION 2; *SECTION* 9; *SECTION* 12, *SUBSECTION* (1 *g*) *OR* (3); *SECTION* 6; *OR SECTION* 5, *SUBSECTION* (6).

1. An application to the county court under the Act—
   (*a*) to determine any question or make any order or declaration relating to increase of rent under section 2, or section 9; or
   (*b*) to apportion the rent or rateable value of the property under subsection 3 of section 12; or
   (*c*) for leave to distrain under section 6; or
   (*d*) by a member of the tenant's family under section 12, subsection (1 *g*); or
   (*e*) for compensation under section 5, subsection (6);

may be made in the case of (*e*) to the court in which the order or judgment complained of was obtained, and in all other cases to the court in[1] the district of which the premises are situate.

2.—(1)[2] An application to the county court under the Act for an order authorising a mortgagee to call in and enforce a mortgage of a leasehold interest to which the Act applies, pursuant to the second proviso to section 7, may be made—
   (*a*) to the court in[1] the district of which the mortgaged property is situate; or
   (*b*) to the court in[1] the district of which the mortgagor resides or carries on business; or
   (*c*) if the mortgagee resides or carries on business in the district of any court mentioned in section 84 of the County Courts Act, 1888, and the mortgagor resides or carries on business in the district of any other court mentioned in the said section, either to the court in[1] the district of which the mortgagee resides or carries on business, or to the court in[1] the district of which the mortgagor resides or carries on business.

3.—(1) Subject to the provisions of this Rule, the Courts (Emergency Powers) Rules and the County Courts (Emergency Powers) Rules as to applications to the High Court or to the county court for leave to foreclose or realize any security to which the Courts (Emergency Powers) Act, 1914, applies, shall cease to apply to mortgages of leasehold interests to which the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, applies: and this Rule shall apply in lieu thereof.

(2) An application under the last preceding Rule for an order authorizing a mortgagee to call in and enforce a mortgage of a leasehold interest shall if and so far as an application for leave to foreclosure or realize the security is required under the Courts (Emergency Powers) Act, 1914, be deemed to be also an application for leave to foreclosure or realize the security under that Act, and no separate application under that Act shall be necessary.

(3) If during the progress of the proceedings on any such application it shall be made to appear to the court that the mortgage is one to which the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, does not apply, but that leave to realize or enforce the security is required under the Courts (Emergency Powers) Act, 1914, and that the amount of the principal sum

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[1] *Sic.* in Rules. Presumably " of the district *in* which " is meant.

[2] *Sic.* in Rules. There is no sub-section 2 of Rule 2.

secured by the mortgage does not exceed five hundred pounds, the application may proceed in the county court as an application for leave to foreclose or realize the security under the last mentioned Act and the County Courts (Emergency Powers) Rules, and those Rules shall apply accordingly; but if the amount of the principal sum secured by the mortgage exceeds five hundred pounds the application shall not proceed under the last mentioned Act, unless the respondent consents to the county court having jurisdiction in the matter, in which case the court shall have jurisdiction to deal with the application as an application for leave to foreclose or realize the security under the last mentioned Act and Rules, and those Rules shall apply accordingly.

(4) If it shall be made to appear to the court that the mortgage is one to which neither of the above mentioned Acts applies, the application shall be struck out.

4. An application under these Rules (other than the applications referred to in Rules 19 and 20) shall be made by means of a summons according to such one of the forms in the Appendix as shall be applicable to the case, entitled "In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920."

PREPARATION, FILING, &C. OF SUMMONSES.

5. The summons shall be prepared by the applicant and filed with the registrar, with as many copies as there are parties to be served : Provided that any summons, with the necessary copies, may, if the registrar so thinks fit, be prepared in his office; and the registrar shall examine, complete, seal, and sign the summons and copies, and return the copies to the applicant for service.

SERVICE AND SUBSTITUTED SERVICE.

6.—(1) The summons shall be served on every person affected thereby four clear days at least before the day fixed for the hearing of the summons, unless the judge or registrar gives leave for shorter service. On an application by the Sanitary Authority under section 2, subsection (2) notice in writing of the summons shall be given to the tenant by the Sanitary Authority.

(2) Service shall be effected in accordance with the provisions of Order LIV., Rules 2 and 3, of the County Court Rules as to service of notice of an interlocutory application.

(3) The practice of the courts as to substituted service of summonses and notices shall apply to summonses under these Rules.

APPLICATIONS TO REGISTRAR.

7. Any application under these Rules may be made to the registrar, subject to the following provisions :—

(*a*) The registrar may in any case, and shall on the application of either party, made on the hearing of the application, and before the registrar has given his decision, refer the matter to the judge :

(*b*) The judge may vary or rescind any determination or order made by the registrar, and may make such determination or order as may be just :

(*c*) An application for such variation or rescission shall be made on notice in writing in accordance with the County Court Rules as to

STATUTORY RULES AND ORDERS NOW IN FORCE—*continued.*

interlocutory applications; and the notice shall be filed within four clear days from the date of the determination or order of the registrar, and if it is not so filed no such application shall be allowed to be made without leave of the judge.

EVIDENCE IN SUPPORT OF APPLICATION.

8. No affidavit in support of the application shall be used, except by leave of the court, but the court shall hear oral evidence tendered by either party.

POWER TO HEAR CASES IN PRIVATE.

9. The court may at any stage of the proceedings on an application under the Act order that the case shall thenceforward be heard in private.

TRANSFER OF PROCEEDINGS.

10. If during the progress of the proceedings on any application it shall be made to appear to the judge that the same could be more conveniently heard in some other court, it shall be competent to the judge to transfer the same to such other court; and in any such case the provisions of section 85 of the County Courts Act, 1888, and section 10 of the County Courts Act, 1919, and of Order VIII., Rule 9, of the County Court Rules, shall apply.

DECISIONS OF COURT.

11. On the hearing of the application, or at any adjournment thereof, the court, on proof of the service of the summons, if the respondent does not appear, shall—

(*a*) in the case of an application under section 2 or section 9 or section 5, sub-section (6) determine the question raised or make or refuse the order or declaration asked for; or

(*b*) in the case of an application under subsection (3) of section 12 apportion the rent or rateable value; or

(*c*) in the case of an application under section 6 give or refuse leave; or

(*d*) in the case of an application under section 7 make or refuse an order authorising the mortgagee to call in or enforce the mortgage; or

(*e*) in the case of any application make such other determination, order or declaration in the matter as the court shall think fit.

POWER TO IMPOSE CONDITIONS.

12. On the application for an order authorising a mortgagee to call in and enforce a mortgage, the court may, after considering all the circumstances of the case and the position of all the parties, make or refuse to make the order subject to such conditions as the court may think fit.

CERTIFICATES, ORDERS OR DECLARATIONS ON APPLICATIONS.

13. When the court has given its decision on any application, a certificate of the determination of the court, or an order or declaration in accordance with the decision of the court, shall be prepared and sealed and signed by the registrar, and duplicates thereof shall be delivered to the bailiff, who shall within twenty-four hours send the same, by post or otherwise, to the parties; but it

shall not be necessary for the party in whose favour a certificate or order or declaration is made to prove, previously to taking proceedings thereon, that it was posted or reached the opposite party.

GENERAL PROVISIONS AS TO PROCEDURE ON APPLICATIONS.

14. Subject to the provisions of the Act and these Rules, the practice and procedure of the court in an action, and in particular the practice and procedure with respect to summoning of witnesses, and with respect to discovery and inspection of documents, shall, with the necessary modifications, apply to proceedings on an application under the Act.

15.—(1) The following fees shall be payable under Schedule B., Part I., of the Treasury Order regulating Fees in the County Courts, on application under the Act and these Rules, in lieu of all other fees on such proceedings, viz. :—

	s.	d.
On an application for an order or declaration or the determination of a question relating to the increase of rent of premises or for leave to distrain— 6d. in the £ or part of a £, calculated on 4 weeks' standard rent (or on an application under section 9 the actual rent) of the premises, or in the case of leave to distrain on the rent to be distrained for, but not exceeding ...	2	6
On an application for the apportionment of rent or rateable value or for compensation under section 5, sub-section 6	10	0
On an application for an order authorising a mortgagee to call in and enforce a mortgage	20	0

The foregoing fees shall include drawing, sealing, and issuing the certificate or order [except in the case of an application for leave to distrain, in which case there shall be payable for drawing sealing and issuing the order (if any) a further fee of 6d. in the £ or part of a £ on the rent to be distrained for, not exceeding 2s. 6d.[1]] and the fee prescribed by paragraph 12 of Part I. of Schedule B. of the Fees Order shall not be taken.

(2) On summonses to witnesses, the fees prescribed by Schedule A of the Fees Order shall be taken.

(3) On applications for discovery or inspection of documents, and on applications for rescission or variation of orders or judgments under section 5, sub-section 3, the fees prescribed by paragraphs 10 and 12 of Part I. of Schedule B of the Fees Order shall be taken.

(4) The court may remit or excuse in whole or in part any fee paid or payable under this Rule.

COSTS.

16.—(1) The costs of any application under the Act and these Rules shall be in the absolute discretion of the court.

(2) The court may either fix the amount of such costs, or allow them on the scale applicable to an interlocutory application in an action for an amount equal to—

(*a*) in the case of an application for an order or declaration or determination of a question relating to the increase of rent, or for leave to distrain, the amount on which fees are payable under Rule 15; or

[1] Added by the Increase of Rent and Mortgage Interest (Restrictions) Rules, 1921, dated June 3, 1921. [S. R. & O. 932, L. 12, 1921.]

STATUTORY RULES AND ORDERS NOW IN FORCE—*continued.*

(*b*) in the case of an application to apportion rent or rateable value, one-half of the annual rent or rateable value apportioned to the premises; or

(*c*) in the case of an application for an order authorising a mortgagee to call in and enforce the mortgage, the amount of the principal sum secured: Provided that Column B of the Scale shall apply in all cases above twenty pounds, to the exclusion of Column C.

(3) Where the amount does not exceed ten pounds, there may be allowed for all work done by a solicitor in relation to the application—

	s.	*d.*
If the amount exceeds £2 but does not exceed £5	6	8
If the amount exceeds £5 but does not exceed £10	10	0

(4) In the case of an application for compensation under section 5, subsection 6, the Court may either fix the amount of such costs or allow them on the scale applicable in an action.

(5) In the case of any other application the Court shall fix the amount of such costs.

(6) The court may direct that any costs allowed shall be payable by the opposite party, or, in the case of an application for an order authorising a mortgagee to call in and enforce a mortgage, that they shall be included in the security; and any order directing payment of costs shall be included in the certificate or order, and shall be enforceable in the same manner as an order for payment of costs made in an action.

FORMS.

17.—(1) The forms in the Appendix hereto, with such modifications as may be necessary, shall be used for summonses, applications, certificates and orders under the Act and these Rules.

(2) The registrar of any Court may apply to the Treasury for any of the said forms to be printed and supplied to him, and if the application is granted may obtain such forms and supply the same without charge for the use of parties requiring the same.

PROCEEDINGS FOR THE RECOVERY OF RENT OR MORTGAGE INTEREST OR FOR THE RECOVERY OF POSSESSION OF TENEMENTS OR EJECTMENTS OF TENANTS.

18. Where proceedings are taken in the county court for the recovery of rent of any premises to which the Act applies, or of interest on a mortgage to which the Act applies, or for the recovery of possession of any premises to which the Act applies, or for the ejectment of a tenant from any such premises, the court shall, before making an order for the recovery of such rent or interest, or for recovery of possession or ejectment, satisfy itself that such order may properly be made, regard being had to the provisions of the Act.

DEATH OF TENANT INTESTATE.

19. Where, on the death of a tenant intestate, a member of his family requires the decision of the Court under the latter part of section 12, subsection (1) (*g*) of the Act, the judge shall give such directions as to the procedure to be followed, and the notices to be given to and the attendance of all such

persons as may be interested as he shall think fit, and he (or the registrar, if so directed by him) shall consider what may be urged (either orally or in writing) by or on behalf of such persons, and thereupon give his decision: provided that the registrar's decision may be varied by the judge pursuant to Rule 7. Rule 13, relating to certificates of decisions, shall apply to a decision under this subsection if so directed by the judge.

APPLICATIONS FOR STAY, RESCISSION OR VARIATION OF ORDERS OR JUDGMENTS.

20.[2] An application to the court for stay, suspension, discharge, rescission or variation of orders or judgments under section 5, subsection (2) or (3) may be made on notice in writing in accordance with the County Court Rules as to interlocutory applications.

BIRKENHEAD, C.

The 9th day of July, 1920.

We, the undersigned, two of the Commissioners of His Majesty's Treasury, do hereby, with the consent of the Lord Chancellor, order that the several fees specified in Rule 15 of the foregoing Rules shall be taken in the proceedings therein mentioned, in lieu of all other fees for the proceedings therein set forth.

JAMES PARKER.
J. TOWYN JONES.

I concur in the above order as to fees.

BIRKENHEAD, C.

The 9th day of July, 1920.

APPENDIX.

1.

Summons for Determination of Question or Declaration or Order relating to Increase of Rent under Section 2, subsection (1) or (3).

In the County Court of , holden at .

In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

No. of Application .

Between

A.B.
(*address and description*) Applicant,

and

C.D.
(*address and description*) Respondent.

To
of

TAKE NOTICE, that you are hereby summoned to attend this Court on , the day of , at the hour of in the noon, on the hearing of an application on the part of , of , for the determination,

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[2] See Rent (Restrictions) Rules, 1924, p. 184, *infra*.

STATUTORY RULES AND ORDERS NOW IN FORCE—*continued.*

pursuant to the above-mentioned Act, of a question [*or* for a declaration or order] relating to the increase of rent of certain premises [*or* of part, that is to say (*here specify the part*) ,
or certain premises], to which the said Act applies, situate at
,
and known as ,
of which the applicant is the tenant and you the respondent are the landlord [*or* of which you the respondent are the tenant and the applicant is the landlord], the question being
[in respect of the transfer to the tenant of certain burdens and liabilities previously borne by the landlord [*or* in respect of the transfer to the landlord of certain burdens and liabilities previously borne by the tenant]],
[*or* (*here state the question to be determined or the declaration or order asked for*)]
and for an order providing for the costs of the application.

AND FURTHER TAKE NOTICE, that if you do not attend in person or by your solicitor at the time and place above mentioned such proceedings will be taken and determination or declaration or order made as the Court may think just.

Dated this day of , 19 .
By the Court,
Registrar.

To
(*the respondent, naming him*).

2.

Summons for Order authorising Mortgagee to call in and enforce Mortgage.

In the County Court of , holden at .

In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

No. of Application .

Between

A.B.
(*address and description*) Applicant,

and

C.D.
(*address and description*) Respondent.

To
of

TAKE NOTICE, that you are hereby summoned to attend this Court on , the day of , at the hour of in the noon, on the hearing of an application on the part of of , for an order that notwithstanding the provisions of the above-mentioned Act, the said may be at liberty to call in and enforce a certain mortgage to which the said Act applies, dated the day of , granted by you the respondent to the applicant [*or* to and assigned by him to the applicant] on certain leasehold property situate at , and known as ,

on the ground that the security is seriously diminishing in value or is otherwise in jeopardy, and that for that reason it is reasonable that the mortgage should be called in and enforced,
and for an order providing for the costs of the application.

AND FURTHER TAKE NOTICE, that if you do not attend in person or by your solicitor at the time and place above mentioned such proceedings will be taken and determination made as the Court may think just.

Dated this day of , 19 .

By the Court,

Registrar.

To
(the respondent, naming him).

3.

Certificate on Application for Determination of Question or Declaration or Order relating to Increase of Rent, under Section 2, subsections (1) or (3).

In the County Court of , holden at .

In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

No. of Application .

Between

A.B.
(address and description) Applicant,

and

C.D.
(address and description) Respondent.

On the application of ,
and upon hearing ,

This Court doth pursuant to the above-mentioned Act determine and declare [or order] as follows—

[(*a*) that as the result of the transfer to the applicant, A.B.,
[*or* the respondent, C.D.,] the tenant of certain premises [*or* of part, that is to say, *(here specify the part)* of certain premises] to which the said Act applies, situate at , and known as

of the following burdens and liabilities formerly borne by the respondent, C.D.,
[*or* by the applicant, A.B.,] the landlord, that is to say *(here specify the burdens and liabilities transferred)* ,
the terms on which the said premises are held are on the whole less favourable to the tenant than the previous terms, and that the rent of the said premises has thereby been increased for the purposes of the said Act by the sum of a week
[*or* are on the whole not less favourable to the tenant than the previous terms, and that the rent of the said premises has not been increased for the purposes of the said Act] :

[*or* (*b*) that as the result of the transfer to the applicant, A.B.,
[*or* the respondent, C.D.,]

STATUTORY RULES AND ORDERS NOW IN FORCE—*continued.*

the landlord of certain premises [*or* of part, that is to say (*here specify the part*)
of certain premises] to which the said Act applies, situate at , and known as ,
of the following burdens and liabilities previously borne by the respondent, C.D.,
[*or* the applicant, A.B.,],
the tenant, that is to say (*here specify the burdens and liabilities transferred*)
and the increase of rent in respect of such transfer, the terms on which the said premises are held are on the whole more favourable to the tenant than the previous terms, and that the increase of rent in respect of such transfer is to be deemed not to be an increase of rent for the purposes of the said Act [*or* are on the whole less favourable to the tenant than the previous terms, and that the increased rent in respect of such transfer is to be deemed to be an increase of rent for the purposes of the said Act to the extent of a week]]
[*or as the case may be.*]

[*or* (*here state the decision of the Court on the question or matter the subject of the application*).]

[*Add, if so ordered,*
And it is ordered that the respondent, C.D.,
[*or* the applicant, A.B.,
do, on or before the day of , 19 , to[1] pay to the applicant, A.B.,
[or to the respondent, C.D.,]
his costs of this application, which are hereby allowed at the sum of £]

Dated this day of , 19 .

By the Court,

To Registrar.
(*the applicant and respondent, naming them*).

4.

Order on Application for Order authorising Mortgagee to call in and enforce Mortgage.

In the County Court of , holden at
In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.
No. of Application .
Between
A.B.
(*address and description*) Applicant,
and
C.D.
(*address and description*) Respondent.

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[1] *Sic* in Rules. The word "to" is apparently surplusage.

On the application of
and upon hearing
This Court being satisfied that the security of the applicant on certain leasehold property situate at
and known as
under a certain mortgage to which the above-mentioned Act applies, dated the day of , granted by the respondent to the applicant [*or* to
and assigned by him to the applicant], is seriously diminishing in value, or is otherwise in jeopardy, and that it is reasonable that the said mortgage should be called in and enforced, doth pursuant to the above-mentioned Act order that notwithstanding the provisions of the said Act the applicant, A.B., be at liberty and he is hereby authorised to call in and enforce the said mortgage.

[*If any conditions imposed, add* subject to the following conditions, that is to say :—

].

[*Or,* It is ordered that the application of the applicant, A.B.,
for an order authorising him to call in and enforce a certain mortgage to which the above-mentioned Act applies, on certain leasehold property situate at
and known as

dated the day of , 19 , granted by the respondent, C.D., to the applicant, A.B. [*or* to
and assigned by him to the applicant, A.B.,]
be and the same is hereby dismissed.

[*Add, if so ordered,*

And it is ordered that the applicant, A.B., be allowed as against the respondent, C.D., his costs of his application, which are hereby allowed at the sum of £ .

And it is ordered that the said sum of £ be added to the security created by the said mortgage [*or* that the respondent, C.D., do pay the said sum of £ to the applicant, A.B., on or before the day of , 19].

[*Or,* And it is ordered that the applicant, A.B., do, on or before the day of , 19 , pay to the respondent, C.D., his costs of this application, which are hereby allowed at the sum of £ .]

Dated this day of , 19 .

By the Court,
Registrar.

To
(*the applicant and respondent, naming them*).

STATUTORY RULES AND ORDERS NOW IN FORCE—*continued.*

5.

Summons for Apportionment of Rent or Rateable Value of Property under Section 12, *subsection* (3).

In the County Court of , holden at .

In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

No. of Application .

Between

A.B.
(*address and description*) Applicant,

and

C.D.
(*address and description*) Respondent.

To
of

TAKE NOTICE, that you are hereby summoned to attend this Court on , the day of , at the hour of in the noon, on the hearing of an application on the part of , of , for the apportionment of the rent on the 3rd day of August, 1914 [*or (if the property was last let before or first let after the 3rd August*, 1914, *insert the date at which it was so let;* see *Act, Section* 12, *subsection* 1 (*a*)]
[*or* the rateable value on the 3rd day of August, 1914 [*or (if the property was first assessed after that date, insert the date at which it was first assessed*)]]
of certain property situate at
and known as
and comprising certain premises [*or* part, that is to say (*here specify the part*)
of certain premises] situate at
and known as
for the purpose of determining the standard rent [*or* the rateable value] of the said premises [*or* of the above-mentioned part of the said premises] for the purposes of the above-mentioned Act,
and for an order providing for the costs of the application.

AND FURTHER TAKE NOTICE, that if you do not attend in person or by your solicitor at the time and place above-mentioned such proceedings will be taken and determination made as the Court may think just.

Dated this day of , 19 .

By the Court,

Registrar.

To
(*the respondent, naming him.*)

6.

Certificate on Application for Apportionment of Rent or Rateable Value.

In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

No. of Application .

Between

A.B.
(*address and description*) Applicant,

and

C.D.
(*address and description*) Respondent.

On the application of
and upon hearing

This Court, for the purpose of determining the standard rent [*or* rateable value] of certain premises [*or* of part, that is to say (*here specify the part*)
of certain premises] to which the above-mentioned Act applies, situate at , and known as ,

and comprised in a certain property known as

doth pursuant to the above-mentioned Act declare that the rent at which the said property was let on the 3rd day of August, 1914 [*or if the property was last let before that date or first let after that date,* on the day of , 19 (*the date on which it was so let*)], shall be apportioned between the said premises [*or* the said part of the said premises] and the rest of the said property as follows, viz. :—

£ to the said premises [*or* the said part of the said premises];
and
£ to the remainder of the said property.

[*or* doth pursuant to the above-mentioned Act declare that the rateable value of the said property on the 3rd day of August, 1914 [*or if the property was first assessed after that date* on the day of ,19 (*the date on which it was first assessed*)], shall be apportioned between the said premises [*or* the said part of the premises] and the rest of the said property as follows, viz. :—

£ to the said premises [*or* the said part of the said premises];
and
£ to the remainder of the said property.

[*Add, if so ordered,*

And it is ordered that the respondent, C.D.,
[*or* the applicant, A.B.,] do, on or before the day of , 19 , pay to the applicant, A.B.,
[*or* to the respondent, C.D.,]
his costs of this application, which are hereby allowed at the sum of .]

Dated this day of , 19 .

By the Court,

To Registrar.
(*the applicant and respondent, naming them*).

STATUTORY RULES AND ORDERS NOW IN FORCE—*continued.*

7.

Summons for Order of Suspension and Declaration relating to Increase of Rent under Section 2, subsection (2).

In the County Court of , holden at .

In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

No. of Application .

Between

A.B.
(*address and description*) Applicant,

and

C.D.
(*address and description*) Respondent.

To
of

TAKE NOTICE that you are hereby summoned to attend this Court on the day of , at the hour of in the noon, on the hearing of an application under Section 2, subsection (2) of the said Act on the part of of for a declaration that certain premises [*or* of part, that is to say (*here specify the part*) of certain premises] to which the said Act applies, situate at and known as of which the applicant [or where the applicant is the Sanitary Authority state the name of the tenant] is the tenant, and you, the respondent, are the landlord, are not in all respects reasonably fit for human habitation [*or* are not in a reasonable state of repair] and that the condition of the premises is not due to the tenant's neglect, or default, or breach of express agreement, if any, and for an order suspending the increase of rent pursuant to Section 2, subsection (2) of the said Act until further order, or for such other declaration, and order in that behalf, as the Court may think fit.

and of an order providing for the costs of this application.

AND FURTHER TAKE NOTICE, that if you do not attend in person or by your solicitor at the time and place above-mentioned, such proceedings will be taken and declaration and order made as the Court may think just.

Dated this day of , 19 .

By the Court,

Registrar.

To
(*the respondent, naming him*).

8.

Order on Application for Order of Suspension and Declaration relating to Increase of Rent, under Section 2, subsection (2).

In the County Court of , holden at .

In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

No. of Application .

Between

A.B.
(*address and description*) Applicant,

and

C.D.
(*address and description*) Respondent.

On the application of
and upon hearing

The Court being satisfied that certain premises [*or* of part, that is to say (*here specify the part*)
of certain premises] to which the said Act applies, situate at , and known as
of which the applicant [*or* where the Sanitary Authority is the applicant state the name of the tenant] is the tenant, and the respondent is the landlord, are not in all respects reasonably fit for human habitation [*or* are not in a reasonable state of repair] and that the condition of the premises is not due to the tenant's neglect, or default, or breach of express agreement doth declare accordingly and doth order, pursuant to Section 2, subsection (2) of the said Act that the increase of rent of be suspended until respondent, upon notice of application in that behalf, shall have satisfied the Court that the necessary repairs (other than the repairs, if any, for which the tenant is liable) have been executed [*or* (such other declaration or order as the Court thinks fit)].

[*Or* it is ordered that the application of the said be, and the same is hereby dismissed.]

[*Add order as to costs, if any: see Form 6.*]

Dated this day of , 19 .

By the Court,

To Registrar.

(*the applicant and respondent, naming them*).

STATUTORY RULES AND ORDERS NOW IN FORCE—*continued.*

9.

Notice of the Application, under Section 5, subsection (2) or (3) for Stay, Suspension, Discharge, Rescission, or Variation of Order, or Judgment.

In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

In the County Court of , holden at .

No. of Application .

Between

A.B.
(*address and description*) Applicant,

and

C.D.
(*address and description*) Respondent.

TAKE NOTICE, that the applicant, A.B., [*or* the respondent, C.D.,] intends to apply to the Judge of this Court on , the day of , 19 , at the hour of in the noon, to stay [suspend, discharge, rescind *or* vary] the order [*or* judgment] made [*or* given] in this matter on the day of , 19 , whereby it was ordered [*or* adjudged] that (*here recite order or judgment*)

and for an order providing for the costs of this application.

AND FURTHER TAKE NOTICE, that the grounds of my intended application are that

(*here set out circumstances*)

Dated this day of ,19 .

(Signed)

Applicant [*or* Respondent],
[*or* Applicant's [*or* Respondent's] Solicitor].

To
(*the respondent or applicant, naming him*),
and to Messrs.
his solicitors,
and to the Registrar of the Court.

10.

Order on Application under Section 5, subsection (2) or (3) for Stay, Suspension, Discharge, Rescission, or Variation of Order or Judgment.

In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

In the County Court of , holden at .

No. of Application .

Between

A.B.
(*address and description*) Applicant,

and

C.D.
(*address and description*) Respondent.

On the application of
for the stay, suspension [discharge, rescission *or* variation] of the order made [*or* judgment given] in this matter on the day of , 19 , whereby it was ordered [*or* adjudged] that
(*here recite order or judgment*)

and upon hearing ,

It is ordered that the said order [*or* judgment] be and the same is hereby stayed, suspended [*or* discharged *or* rescinded *or* varied] as follows :—
(*here set out terms of order*)

[*Or*, It is ordered that the application of the said be and the same is hereby dismissed.]

[*Add order as to costs, if any* : see Form 7.[1]]

Dated this day of , 19 .

By the Court,
Registrar.

To
(*the applicant and respondent, naming them*).

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[1] *Sic* in Rules. Form 6 seems to be meant.

STATUTORY RULES AND ORDERS NOW IN FORCE—*continued.*

11.

Summons on Application for Determination of Question or Declaration and Order under Section 9.

In the County Court of , holden at .

In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

No. of Application .

Between

A.B.
(*address and description*) Applicant,

and

C.D.
(*address and description*) Respondent.

TAKE NOTICE, that you are hereby summoned to attend this Court on the day of 19 , at the hour of in the noon, on the hearing of an application on the part of of the particulars of which are hereunto annexed.

AND FURTHER TAKE NOTICE, that if you do not attend in person or by your solicitor at the time and place above mentioned, such proceedings will be taken and order made as the Court may think just.

Dated this day of , 19 .

By the Court,
Registrar.

To
(*the Respondent, naming him*).

PARTICULARS.

[*To be appended or annexed to summons and, if on separate paper, with heading as in summons.*]

1. On or about the day of , 19 , the Respondent let certain premises [*or* a part, that is to say (*here specify the part*) of certain premises] to which the said Act applies, situate at and known as to the Applicant at a rent of a week [*or* a month, *or as the case may be*] , which rent includes payment in respect of furniture.

2. The Applicant alleges that the rent charged for the premises so let to him is yielding, or will yield, to the Respondent a profit more than 25 per cent. in excess of the profit which might reasonably have been obtained from a similar letting in the year ending on the 3rd day of August, 1914.

3. The Applicant therefore applies to the Court under section 9 of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920—

(*a*) for a declaration that it is proved to the satisfaction of the Court that the rent charged on the letting of the said premises by the Respondent to the Applicant is yielding, or will yield, to the Respondent a profit more than 25 per cent. in excess of the profit which might reasonably

have been obtained from a similar letting in the year ending on the 3rd day of August, 1914, and for an assessment by the Court of the amount of such last-mentioned profit; and

(*b*) for an order that the said rent, so far as it exceeds such sum as would yield such last-mentioned profit and 25 per cent. thereon, shall be irrecoverable; and

(*c*) for an order that the amount of any payment of rent in excess of such sum made by the Applicant in respect of any period after the passing of the said Act shall be repaid to the Applicant, and may, without prejudice to any other mode of recovery, be recovered by the Applicant by means of deductions from any subsequent payment of rent; and

(*d*) for an order providing for the costs of this application.

Dated this day of , 19 .

Applicant
[*or* Applicant's Solicitor].

12.

Order on Application under Section 9.

In the County Court of , holden at .

In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

No. of Application .

Between

A.B.
(*address and description*) Applicant,

and

C.D.
(*address and description*) Respondent.

On the application of for an order under section 9 of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, and upon hearing ,

The Court doth declare that it is proved to its satisfaction that the rent charged on the letting by the Respondent to the Applicant of certain premises [*or* a part, that is to say (*here specify the part*) of certain premises] to which the said Act applies, situate at and known as at a rent of a week [*or* a month, *or as the case may be*], which rent includes payment in respect of the use of furniture, is yielding, or will yield, to the Respondent a profit more than 25 per cent. in excess of the profit which might reasonably have been obtained from a similar letting in the year ending on the 3rd day of August, 1914, which last-mentioned profit is hereby assessed by the Court at the sum of a week [*or* a month, *or as the case may be*].

And it is ordered that the said rent to the extent of a week [*or as the case may be*] being the amount by which the said rent exceeds the sum of per week [*or as the case may be*] , which would yield such last-mentioned profit and 25 per cent. thereon, shall be irrecoverable.

And it is further ordered that the sum of , being the amount of the payments of rent in excess of the said sum of per week

STATUTORY RULES AND ORDERS NOW IN FORCE—*continued.*

(*or as the case may be*) made by the Applicant in respect of the period of the said letting after the passing of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, shall be repaid to the Applicant, and may, without prejudice to any other method of recovery, be recovered by the Applicant by means of deductions from any subsequent payments of rent.

[*Add, if so ordered—*

And it is ordered that the Respondent do pay the said sum of to the Applicant on the day of [*or* by instalments of for every days, the first payment to be made on the day of].]

[*Add also, if so ordered—*

And it is ordered that the Respondent do on or before the day of pay to the Applicant his costs of this application, which are hereby allowed at the sum of .]

[*Or, if application fails—*

On the application of for an order under section 9 of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, and upon hearing

It is ordered that the said application be and the same is hereby dismissed.

[*Add directions, if any, as to costs*

].]

Dated this day of , 19 .

By the Court,

To Registrar.

(*the applicant and respondent, naming them*).

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13 and 14.

For summons and order for leave to distrain adapt forms 5 and 6 under the Consolidated County Courts (Emergency Powers) Rules, 1918.

15.

Summons for Declaration and Order relating to payment of Compensation under Section 5, subsection (6).

In the County Court of , holden at .

In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

No. of Application .

Between

A.B.

(*address and description*) Applicant,

and

C.D.

(*address and description*) Respondent.

To

of

TAKE NOTICE, that you are hereby summoned to attend this Court on the day of , at the hour of in the noon, on the hearing of an application under Section 5, subsection (6) of the said Act, on the part of of , for a declaration that the order [*or* judgment] dated the day of , and made [*or* given] in an action in this Court

(*here give title of action*)

for possession of [*or* ejectment from] certain premises [*or* of part, that is to say,

(*here specify the part*)

of certain premises]

to which the said Act applies, situate at , and known as , of which the Applicant was the tenant, and you the Respondent were the landlord, was obtained by misrepresentation [*or* the concealment of material facts]

and that the Applicant is entitled to recover from you compensation for damage or loss sustained by him as the result of the said order [*or* judgment], and for an order ordering you to pay the sum of £ , [*or* such sum as shall appear to the Court sufficient] as compensation for such damage or loss, or for such other declaration and order in that behalf as the Court may think fit, and for an order providing for the costs of this application.

AND FURTHER TAKE NOTICE, that if you do not attend in person or by your solicitor at the time and place above-mentioned, such proceedings will be taken and declaration and order made as the Court may think just.

Dated this day of , 19 .

By the Court,
Registrar.

To
the Respondent,
(*naming him*).

16.

Order on Application for Declaration and Order relating to Payment of Compensation under Section 5, subsection (6).

In the County Court of , holden at ,

In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

No. of Application .

Between

A.B.
(*address and description*) Applicant,

and

C.D.
(*address and description*) Respondent.

On the application of
and upon hearing

The Court doth declare and adjudge that the order [*or* judgment] dated the day of , and made [*or* given] in an action in

STATUTORY RULES AND ORDERS NOW IN FORCE—*continued.*

this Court (*here give title of action*) , for possession of [*or* ejectment from] certain premises [*or* of part, that is to say (*here specify the part*) of certain premises] to which the said Act applies, situate at and known as , of which the applicant was the tenant, and the Respondent was the landlord, was obtained by misrepresentation [*or* the concealment of material facts], and that the Applicant is entitled under Section 5, subsection (6) of the said Act to recover against the Respondent the sum of £ as compensation for damage or loss sustained by the Applicant as the result of the said order [*or* judgment] and it is ordered that the Respondent do pay the said sum of £ to the Registrar of this Court on the day of , [*or* it is ordered that the application of the said be, and the same is hereby dismissed].

[*Add order as to costs if any: see Form* 6].

Dated this day of , 19 .

By the Court,

Registrar.

the Applicant and Respondent,
(*naming them*).

B.

STATUTORY RULES AND ORDERS, 1921.

No. 932 / L. 12

Rent (Restrictions on Increase of).

COUNTY COURT PROCEDURE.

THE INCREASE OF RENT AND MORTGAGE INTEREST (RESTRICTIONS) RULES, 1921, DATED JUNE 3, 1921, MADE BY THE LORD CHANCELLOR UNDER THE INCREASE OF RENT AND MORTGAGE INTEREST (RESTRICTIONS) ACT, 1920 (10 & 11 GEO. 5. c. 17).

1. There shall be inserted after the word "order" in the last line but one of Rule 15 (1) of the Increase of Rent and Mortgage Interest (Restrictions) Rules, 1920 (S. R. & O. 1920, No. 1261), the following words :—

"(Except in the case of an application for leave to distrain, in which case there shall be payable for drawing sealing and issuing the order (if any) a further fee of 6d. in the £ or part of a £ on the rent to be distrained for, not exceeding 2s. 6d.)."

2. The Increase of Rent and Mortgage Interest (Restrictions) Rules, 1920, shall be read and construed as if they contained the words prescribed by the last preceding Rule for insertion therein.

3. These Rules may be cited as the Increase of Rent and Mortgage Interest (Restrictions) Rules, 1921.

BIRKENHEAD, C.

We, the undersigned, two of the Commissioners of His Majesty's Treasury, do hereby, with the consent of the Lord Chancellor, order that the fee specified in Rule 1 of the foregoing Rules shall be taken on an application for leave to distrain, and that the Fees Order appended to the Increase of Rent and Mortgage Interest (Restrictions) Rules, 1920, shall be read and construed as if the reference to Rule 15 were a reference to Rule 15 as amended by the foregoing Rules.

JAMES PARKER.
J. TOWYN JONES.

I concur in the above Order as to Fees.

BIRKENHEAD, C.

Dated the 3rd day of June, 1921.

C.

STATUTORY RULES AND ORDERS, 1923.

No. 901 / L. 16

LANDLORD AND TENANT, ENGLAND.

Rent (Restrictions on Increase of).

COUNTY COURT PROCEDURE.

THE RENT (RESTRICTIONS) RULES, 1923, DATED AUGUST 7, 1923, MADE BY THE LORD CHANCELLOR UNDER THE RENT AND MORTGAGE INTEREST RESTRICTIONS ACTS, 1920 AND 1923 (10 & 11 GEO. 5. C. 17, AND 13 & 14 GEO. 5. C. 32).

1. The Increase of Rent and Mortgage Interest (Restrictions) Rules, 1920 (S. R. & O., 1920, No. 1261), (hereinafter referred to as the principal Rules) other than Rules 2, 3, 12, 19 and 20 shall be extended to include applications under Part I of the Rent and Mortgage Interest Restrictions Act, 1923 (hereinafter referred to as the 1923 Act) except under subsection (2) of section 11, and the forms prescribed by the principal Rules shall be used with the necessary modifications accordingly.

2.—(1) The fees payable in the case of any such original application under the 1923 Act shall, if the same could not have been made under the principal Act, be as directed by Rule 15 of the principal Rules in the case of an application under the principal Act for the apportionment of rent. Where the application could have been made under the principal Act the fees shall be as directed by that Rule in the case of such an application.

(2) The costs of any such original application under the 1923 Act whether the same could or could not have been made under the principal Act shall be

STATUTORY RULES AND ORDERS NOW IN FORCE—*continued.*

in the absolute discretion of the Court and the Court in every such case shall fix the amount of such costs.

3. The Court may exercise the power of amendment conferred by subsection (1) of section 6 of the 1923 Act either on an original application by landlord or tenant in that behalf as directed by the foregoing Rule 1, or, where proceedings before the Court are pending in which the validity of any notice of increase is in question or is material, on request by either party at any time in the course of those proceedings.

4.—(1) Where parties desire to have any questions arising under the principal Act or Part I of the 1923 Act settled by arbitration pursuant to the provisions of subsection (2) of section 11 of the 1923 Act, they shall sign and deliver to the County Court of the district in which the demised premises are situate a request in writing in accordance with the form set out in the Appendix to these Rules, which shall stand as Form 17 in the Appendix to the principal Rules.

(2) On receipt of the application in the case where with the consent of the parties the arbitration is to be before a person nominated by the judge, the judge shall proceed forthwith to nominate an arbitrator and notify the nomination to the parties.

The arbitrator, whether the judge, registrar, or other person, shall, after communication with the parties fix an early date convenient to the parties for the arbitration in the Court Buildings or some other place convenient to the parties, and after hearing the parties or their representatives and the evidence, he shall give his determination in writing either at the arbitration or afterwards as soon as may be and shall deliver the same to each of the parties or their representatives.

(3) The Arbitration Act, 1889 (52 & 53 Vict. c. 49), shall not apply to an arbitration under subsection (2) of section 11 of the 1923 Act.

(4) The only fee payable on such an arbitration shall be the sum of £1 10s. which should be sent to the Court with the application. Where a person other than the judge or registrar acts as arbitrator, the fee of £1 10s. shall be handed to him. Where the judge acts as arbitrator, the fee shall be deemed to be included in Schedule A of the Treasury Order regulating Fees in the County Courts. Where the registrar acts as arbitrator, the fee shall be deemed to be included as to half in Schedule A, and as to half in Schedule B, Part I, of that Fees Order.

5. These Rules may be cited as the Rent (Restrictions) Rules, 1923.

Dated the 7th day of August, 1923.

CAVE, C.

The Lords Commissioners of His Majesty's Treasury do hereby, with the consent of the Lord Chancellor, order that the fees prescribed by Rules 2 (1) and 4 (4) of the foregoing Rules shall be taken on the proceedings therein mentioned.

GEORGE HENNESSY,
W. COPE,
} Lords Commissioners of His Majesty's Treasury.

I concur in the above Order as to fees.

CAVE, C.

Dated the 7th day of August, 1923.

APPENDIX.

17.

FORM OF REQUEST FOR ARBITRATION UNDER SECTION 11 (2).

In the County Court of , holden at .

In the Matter of the Rent and Mortgage Interest Restrictions Act, 1923.

Whereas certain questions have arisen between us in relation to the tenancy of

under or in connection with the principal Act or Part I of the above-mentioned Act of 1923 that is to say

we hereby request the judge or registrar of the above court [or some person to be nominated by the judge]* to act as arbitrator between us and determine the above questions under section 11 (2) of the Act of 1923 such determination to be final and conclusive and binding upon us for all purposes.

Each of us is to bear and pay his own costs but the Court or arbitrator's fee of £1 10s. sent herewith is to be borne by us in equal shares.

The arbitrator may view the premises before determining any question. He may also at the request of either of us exercise the power of amending a notice of increase conferred on the Court by section 6 (1) of the Act of 1923.

(Signature)

* The words in brackets may be struck out if desired by the signatories.

D.

STATUTORY RULES AND ORDERS.

1924, No. 168.

LANDLORD AND TENANT, ENGLAND.

Agricultural Holdings.

THE RENT RESTRICTIONS (FEE) REGULATION, 1924, DATED FEBRUARY 19, 1924, MADE BY THE MINISTER OF AGRICULTURE AND FISHERIES UNDER SECTION 18 (2) OF THE RENT AND MORTGAGE INTEREST RESTRICTIONS ACT, 1923 (13 & 14 GEO. 5. C. 32), DETERMINING FEE ON APPLICATION TO COUNTY AGRICULTURAL COMMITTEE FOR CERTIFICATE THAT DWELLING-HOUSE IS REQUIRED FOR PROPER WORKING OF AN AGRICULTURAL HOLDING.

The Minister of Agriculture and Fisheries in exercise of the power conferred on him by Section 18 (2) of the Rent and Mortgage Interest Restrictions Act, 1923, hereby determines as follows :—

1. The amount of the fee payable on any application to a County Agricul-

STATUTORY RULES AND ORDERS NOW IN FORCE—*continued.*

tural Committee for a certificate for the purpose of paragraph (ii) of Subsection (1) of Section five of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, shall be such amount not exceeding the sum of two guineas as the Agricultural Committee, in accordance with any directions given by the County Council, may in each case require.

2. The Regulation made by the Minister on the 27th day of August, 1923, as to the fee so payable is hereby revoked.

3. This Regulation may be cited as the Rent Restrictions (Fee) Regulation, 1924.

In Witness whereof the Official Seal of the Minister of Agriculture and Fisheries is hereunto affixed this nineteenth day of February, nineteen hundred and twenty-four.

(L.S.) F. L. C. FLOUD,
Secretary.

E.

STATUTORY RULES AND ORDERS, 1924.

1924, No. $\frac{818}{\text{L. } 12}$

LANDLORD AND TENANT, ENGLAND.

Rent (Restrictions on Increase of).

COUNTY COURT PROCEDURE.

THE RENT (RESTRICTIONS) RULES, 1924, DATED AUGUST 6, 1924, MADE BY THE LORD CHANCELLOR UNDER THE RENT AND MORTGAGE INTEREST (RESTRICTIONS) ACTS, 1920 TO 1924 (10 & 11 GEO. 5. C. 7; 13 & 14 GEO. C. 32; AND 14 & 15 GEO. 5. C. 18).

1. Rule 20 of the Increase of Rent and Mortgage Interest (Restrictions) Rules, 1920, shall be extended to include applications under section 2, subsection (1) of the Prevention of Eviction Act, 1924, and where the application is to be heard by the judge either in the first instance or on reference or appeal from the registrar and the judge is not sitting, the registrar may, on application in that behalf and on such terms (if any) as he shall think fit, stay proceedings under the judgment, order, or execution until the matter can be dealt with by the judge.

2. These Rules may be cited as the Rent (Restrictions) Rules, 1924.

Dated the 6th day of August, 1924.

HALDANE, C.

APPENDIX IV.

List of Statutory Rules and Orders No Longer in Force.

A.—In pursuance of his powers under the 1915 Act, s. 3, the Lord Chancellor made three orders :—

1. The Increase of Rent and Mortgage Interest (War Restrictions) Rules, 1916, dated January 29, 1916 [S. R. & O., 63, L. 2, 1916].
2. The Increase of Rent and Mortgage Interest (War Restrictions) Rules, 1916 (No. 2), dated June 26, 1916 [S. R. & O., 446, L. 22, 1916].
3. The Increase of Rent and Mortgage Interest (Restrictions) Rules, 1919, dated May 21, 1919 [S. R. & O., 623, 1919].

B.—1. By Order in Council dated April 13, 1918 [S. R. & O., 469, 1918], the 1915 Act as amended by the Courts (Emergency Powers) Act, 1917, was extended to the Isle of Man, and directed to be cited as the Increase of Rent and Mortgage Interest (War Restrictions) (Isle of Man) Act, 1918.

2. By Order in Council dated May 30, 1919 [S. R. & O., 774, 1919] parts of the 1919 Act were extended to the Isle of Man.

3. By Order in Council dated December 9, 1919 [S. R. & O., 2041, 1919] the 1918 Act was extended to the Isle of Man with modifications.

4. By Order in Council dated August 10, 1921 [S. R. & O., 1287, 1921] the above Order of April 13, 1918, was revoked as from August 31, 1920.

C.—In pursuance of his powers under the 1923 Act, s. 18 (2) the Minister of Agriculture and Fisheries issued an Order dated August 27, 1923 [S. R. & O., 1029, 1923].

D.—In pursuance of his powers under the 1915 Act, ss. 3 and 4 (2) (*a*), the Lord Chancellor of Ireland made two Orders :—

1. S. R. & O., 221, 1916, dated March 24, 1916.
2. S. R. & O., 747, 1916, dated October 17, 1916.

E.—In pursuance of their powers under the 1919 Act, § 10 (*b*), the Local Government Board for Ireland made an Order dated February 3, 1920 [S. R. & O. 209, 1920].

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